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code of federal regulations

Aeronautics and Space

14

PART 1200 TO END
Revised as of January 1, 1991

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Aeronautics and Space

14

PART 1200 TO END

Revised as of January 1, 1991

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AS OF JANUARY 1, 1991

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Cite this Code: **CFR**

To cite the regulations in this volume use title, part and section number. Thus, **14 CFR 1201.100** *refers to title 14, part 1201, section 100.*

Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

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Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16	as of January 1
Title 17 through Title 27	as of April 1
Title 28 through Title 41	as of July 1
Title 42 through Title 50	as of October 1

The appropriate revision date is printed on the cover of each volume.

LEGAL STATUS

The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

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An index to the text of "Title 3—The President" is carried within that volume.

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MARTHA L. GIRARD,
Director,
Office of the Federal Register.

January 1, 1991.

THIS TITLE

Title 14—AERONAUTICS AND SPACE is composed of five volumes. The parts in these volumes are arranged in the following order: Parts 1-59, 60-139, 140-199, 200-1199, and Part 1200-End. The first three volumes containing Parts 1-199 are comprised of Chapter I—Federal Aviation Administration. The fourth volume containing Parts 200-1199 is comprised of Chapter II—Office of the Secretary, Department of Transportation (Aviation Proceedings) and the fifth volume containing Part 1200-End is comprised of Chapter V—National Aeronautics and Space Administration. The contents of these volumes represent all current regulations codified under this title of the CFR as of January 1, 1991.

A redesignation table appears in the Finding Aids section of the volume containing Parts 60-139.

For this volume Jim Wickliffe was Chief Editor, assisted by Ina C. Masters. The Code of Federal Regulations publication program is under the direction of Richard L. Claypoole, assisted by Alomha S. Morris.

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(This book contains Part 1200 to End)

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PART 1200—[RESERVED]

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Authority: 5 U.S.C. 552.

Source: 55 FR 37222, Sept. 10, 1990, unless otherwise noted.

Subpart 1—Introduction

§ 1201.100 Creation and authority.

The National Aeronautics and Space Administration was established by the National Aeronautics and Space Act of 1958 (72 Stat. 426, 42 U.S.C. 2451 et seq.), as amended (hereafter called the "Act").

§ 1201.101 Purpose.

It is the purpose of the National Aeronautics and Space Administration to carry out aeronautical and space activities of the United States. Such activities shall be the responsibility of, and shall be directed by, the National Aeronautics and Space Administration, except that activities peculiar to or primarily associated with the development of weapons systems, military operations, or the defense of the United States shall be the responsibility of, and shall be directed by, the Department of Defense.

§ 1201.102 Functions.

In order to carry out the purpose of the Act, NASA is authorized to conduct research for the solution of problems of flight within and outside the Earth's atmosphere; to develop, construct, test, and operate aeronautical and space vehicles for research purposes; to operate a space transportation system including the space shuttle, upper stages, space program, space station, and related equipment; and to perform such other activities as may be required for the exploration of space. The term "aeronautical and space vehicles" means aircraft, missiles, satellites, and other space vehicles, together with related equipment, devices, components, and parts. It conducts activities required for the exploration of space with manned and unmanned vehicles and arranges for the most effective utilization of the scientific and engineering resources of the United States with other nations engaged in aeronautical and space activities for peaceful purposes.

§ 1201.103 Administration.

(a) NASA is headed by an Administrator, who is appointed from civilian life by the President by and with the advice and consent of the Senate. The Administrator is responsible, under the supervision and direction of the President, for exercising all powers and discharging all duties of NASA.

(b) The Deputy Administrator of NASA is also appointed by the President from civilian life by and with the advice and consent of the Senate. The Deputy Administrator acts with or for the Administrator within the full scope of the Administrator's responsibilities. In the Administrator's absence, the Deputy Administrator serves as Acting Administrator.

Subpart 2—Organization

§ 1201.200 General.

(a) NASA's basic organization consists of the Headquarters, eight field installations, the Jet Propulsion Laboratory (a Government-owned, contractor-operated facility), and several component installations which report to Directors of Field Installations. Responsibility for overall planning, coordination, and control of NASA programs is vested in NASA Headquarters located in Washington, DC. NASA Headquarters is comprised of:

(1) The Office of the Administrator which includes the Administrator, Deputy Administrator, Associate Deputy Administrator, Assistant Deputy Administrator, and the Executive Officer.

(2) Four Program Offices which are responsible for planning, direction, and management of agencywide research and development programs. Officials-in-Charge of these Program Offices report directly to the Administrator and they consist of:

(i) The Office of Aeronautics, Exploration and Technology which is responsible for conducting programs to develop advanced technology to enable and enhance an aggressive pursuit of national objectives in aeronautics, space, and transatmospherics, including the National Aero-Space Plane Program; to demonstrate the feasibility of this advanced technology in ground, flight, and in-space facilities to ensure its early utilization; and to ensure the application of agency capabilities and facilities to programs of other agencies and the United States aerospace industry. The Office is the focal point for the Space Exploration Initiative, a long-term program of robotic and human exploration which will include sending humans to the Moon early in the 21st century to establish a permanent outpost, and then conducting human missions to the planet Mars. In addition, the Office is responsible for managing the Ames, Langley, and Lewis Research Centers.

(ii) The Office of Space Science and Applications is responsible for efforts to understand the origin, evolution, and structure of the universe, the solar system, and the integrated functioning of the Earth. The Office conducts space application activities, such as remote sensing of the Earth, developing and understanding microgravity processes, and developing and testing advanced space communications as well as basic and applied science to facilitate life in space. The Office also is responsible for managing the Goddard Space Flight Center and the Jet Propulsion Laboratory and maintaining contacts with the Space Science Board of the National Academy of Sciences, the Space Applications Board, and other science advisory boards and committees. The Office coordinates its program with various government agencies, foreign interests, and the private sector. Its objectives are accomplished through research and development in astrophysics, life sciences, Earth sciences and applications, solar system exploration, space physics, communications, microgravity science and applications, and communications and information systems. The Office also utilizes the space shuttle, expendable launch vehicles, automated spacecraft, human-occupied spacecraft, sounding rockets, balloons, aircraft, and ground-based research to conduct its programs.

(iii) The Office of Space Flight is responsible for advancing the space shuttle, for developing Freedom, a permanently manned space station, and for carrying out space transportation and other associated programs, including the management of the Johnson Space Center, Marshall Space Flight Center, Kennedy Space Center, and John C. Stennis Space Center. The Office plans, directs, and executes the development, acquisition, testing, and operations of all elements of the Space Transportation System; plans, directs, and manages execution of prelaunch, launch, flight, landing, postflight operations, and payload assignments; maintains and upgrades the design of ground and flight systems throughout the operational period; procures recurring system hardware; manages all U.S. Government civil launch capabilities and spacelab development, procurement, and operations; develops and implements necessary policy with other government and commercial users of the Space Transportation System; and coordinates all research. The Office is also responsible for managing and directing all aspects of the Space Station Freedom Program and achieving the goals established by the President. These goals include developing a permanently manned space station in the mid-1990's and involving other countries in the program, and promoting scientific research, technology development, and private-sector investment in space. The Johnson Space Center, the Marshall Space Flight Center, the Goddard Space Flight Center, and the Lewis Research Center are responsible for developing major elements of the space station. The concept of the Space Station Freedom Program is to privide a manned base, initially accommodating a crew of eight people.

(iv) The Office of Space Operations is responsible for an array of functions critical to operations of this Nation's space programs. They include spacecraft operations and control centers; ground and space communications; data acquisition and processing; flight dynamics and trajectory analyses; spacecraft tracking; and applied research and development of new technology. The Space Transportation System, Tracking and Data Relay Satellite System, Deep Space Network, Spaceflight Tracking and Data Network, and various other facilities currently provide the requirements for NASA's space missions. A global communications system links tracking sites, control centers, and data processing facilities that provide real-time data processing for mission control, orbit, and attitude determination, and routine processing of telemetry data for space missions.

(3) Thirteen Headquarters Offices which provide agencywide leadership in management and administrative processes. Officials-in-Charge of these offices report to the Administrator.

(b) Directors of NASA Field Installations and other component installations are responsible for execution of NASA's programs, largely through contracts with research, development, and manufacturing enterprises. A broad range of research and development activities are conducted at NASA field installations and other component installations by Government-employed scientists, engineers, and technicians to evaluate new concepts and phenomena and to maintain the capability required to manage contracts with private enterprises. Although these field installations have a primary program responsibility to the program office to which they report, they also conduct work for the other program offices.

(c) The NASA field installations and a brief description of their responsibilities are as follows:

(1) *Ames Rescarch Center, Moffett Field, CA 94035.* The Center manages a diverse program of research and development in support of the Nation's aerospace program and maintains unique research and test facilities including wind tunnels, simulators, supercomputers, and flight test ranges. Current areas of emphasis include the development of aerospace vehicle concepts through synergistic application of the Center's complete capabilities, ranging from computation and experimentation (in wind tunnels and simulators) to flight testing; research in support of human adaptation and productivity in the microgravity environment; and research and development of human/machine interfaces and levels of automation to optimize the operation of future aerospace systems, as well as future hypersonic vehicles and probes. Specifically, the Center's major program responsibilities are concentrated in computational and experimental fluid dynamics and aerodynamics; fluid and thermal physics; rotorcraft, powered-lift, and high-performance aircraft technology; flight simulation and research; controls and guidance; aerospace human factors; automation sciences, space and life sciences; airborne sciences and applications; space biology and medicine; and ground and flight projects in support of aeronautics and space technology. In addition to these major program responsibilities, the Center provides support for military programs and major agency projects such as the Space Transportation System, Space Station, and the National Aero-Space Plane.

(2) *Goddard Space Flight Center, Greenbelt, MD 20771.* The Center conducts Earth-orbital spacecraft and experiment development flight operations. It develops and operates tracking and data acquisition systems and conducts supporting mission operations. It also develops and operates spacelab payloads; space physics research program; Earth science and applications programs; life science programs; information systems technolo-

gy; sounding rockets and sounding rocket payloads; launch vehicles; balloons and balloon experiments; planetary science experiments; and sensors for environmental monitoring and ocean dynamics.

(3) *John F. Kennedy Space Center, Kennedy Space Center, FL 32899.* The Center designs, constructs, operates, and maintains space vehicle facilities and ground support equipment for launch and recovery operations. The Center is also responsible for prelaunch operations, launch operations, and payload processing for the space shuttle and expendable launch vehicle programs, and landing operations for the space shuttle orbiter; also recovery and refurbishment of the reusable solid rocket booster.

(4) *Langley Research Center, Hampton, VA 23665.* The Center performs research in long-haul aircraft technology; general aviation commuter aircraft technology; military aircraft and missile technology; National Aero-Space Plane; fundamental aerodynamics; computational fluid dynamics; propulsion/airframe integration; unsteady aerodynamics and aeroelasticity; hypersonic propulsion; aerospace acoustics; aerospace vehicle structures and materials; computational structural mechanics; space structures and dynamics; controls/structures interaction; aeroservoelasticity; interdisciplinary research; aerothermodynamics; aircraft flight management and operating procedures; advanced displays; computer science; electromagnetics; automation and robotics; reliable, fault-tolerant systems and software; aircraft flight control systems; advanced space vehicle configurations; advanced space station development; technology experiments in space; remote sensor and data acquisition and communication technology; space electronics and control systems; planetary entry technology; nondestructive evaluation and measurements technology; atmospheric sciences; Earth radiation budget; atmospheric dynamics; space power conversion and transmission; space environmental effects; and systems analysis of advanced aerospace vehicles.

(5) *Lewis Research Center, Cleveland, OH 44135.* The Center manages the design and development of the power generation, storage, and distribution system for Space Station Freedom. The Center is also responsible for conducting research and technology activities in the following areas: airbreathing propulsion systems, including those needed for the National Aero-Space Plane; turbomachinery thermodynamics and aerodynamics; fuel and combustion; aero and space propulsion systems; space power; power transmission; tribology; internal engine computational fluid dynamics; materials; structural analysis; instrumentation; space communications, including design and development of the Advanced Communications Technology Satellite (ACTS); the ACTS experiments program; design, development, and fabrication of microgravity space experiments; and the procurement of intermediate and large-class expendable launch vehicle launch services. The Center also plays an important role in planning the Space Exploration Initiative and in implementing the Exploration Technology Program. In addition, the Center provides research and technology support to the Department of Defense and assists the private sector in identifying potential industrial applications and commercialization of NASA-developed technology.

(6) *Lyndon B. Johnson Space Center, Houston, TX 77058.* The Center manages the development and operation of the space shuttle, a manned space transportation system developed for the United States by NASA. The shuttle is designed to reduce the cost of using space for commercial, scientific, and defense needs. The Center is responsible for development, production, delivery, and flight operation of the orbiter vehicle, that portion of the space shuttle that is designed to take crew and experiments into space, place satellites in orbit, retrieve ailing satellites, etc. The shuttle crew (up to seven people) includes pilots, mission specialists, and payload specialists. Crew personnel (other than payload specialists) are recruited, selected, and trained by the Center. It is also responsible for design, development, and testing of spaceflight payloads and associated systems for manned flight;

for planning and conducting manned spaceflight missions; and for directing medical, engineering, and scientific experiments that are helping us understand and improve the environment. For the space station program, the Center provides support in the areas of headquarters level A responsibilities and project management.

(7) *George C. Marshall Space Flight Center, Marshall Space Flight Center, AL 35812.* The Center manages, develops, and tests the External Tank, Solid Rocket Booster, and main engines, which are major portions of the space shuttle project; oversees the development of the U.S. Spacelab; manages the space telescope; and conducts research in structural systems, materials science engineering, electronics, guidance, navigation, and control.

(8) *John C. Stennis Space Center, Stennis Space Center, MS 39529.* The Center plans and manages research and development activities in the field of space and terrestrial applications; space flight; research in oceanography, meteorology, and environmental sciences. The Center coordinates research between the Administration and other government agencies.

(d) The NASA Office of Inspector General is established pursuant to Act of Congress, Public Law 95-452, as amended, 5 U.S.C. App. III. The Inspector General is appointed by the President, by and with the advice and consent of the Senate, without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations. The Inspector General appoints an Assistant Inspector General for Auditing, who is responsible for supervising the performance of auditing activities relating to NASA's programs and operations, and an Assistant Inspector General for Investigations, who is reponsible for supervising the performance of NASA's investigative activities. It is the duty and responsibility of the Inspector General to provide policy direction, to conduct, supervise and coordinate audits and investigations related to NASA's programs and operations in order to promote economy and efficiency, and to prevent and detect fraud and abuse in these programs and operations. The Inspector General must report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law. The Inspector General is responsible for keeping the Administrator and Congress fully and currently informed, by reports concerning fraud and other serious problems, abuses, and deficiencies related to NASA's programs and operations, for recommending corrective actions, and for reporting on the progress in implementing such corrective actions. The Inspector General reports to the Administrator, but neither the Administrator nor the Deputy Administrator can prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena under authority of the Inspector General Act. In carrying out the responsibilities, the Inspector General shall comply with standards established by the Comptroller General of the United States for audits of governmental organizations, programs, activities, and functions. The Inspector General reports to Congress on a semiannual basis, summarizing the activities of the office. These reports are available to the public upon request within 60 days of their transmission to the Congress. Anyone wishing to report instances of fraud, waste, or mismanagement in NASA's programs and operations can call the Inspector General Hotline at 755-3402 in the Washington, DC, area or toll free (800) 424-9183 for all other areas. The office maintains a 24-hour answering service. Identities of complainants can be kept confidential. Written complaints can be sent to the NASA Inspector General, P.O. Box 23089, L'Enfant Plaza Station, Washington, DC 20026.

(e) For more detailed description of NASA's organizational structure, see the "U.S. Government Manual."

Subpart 3—Boards and Committees

§ 1201.300 Boards and committees.

Various boards and committees have been established as part of the permanent organization structure of NASA. These include:

(a) *Board of Contract Appeals.* (1) The Board is established in accordance with the Contract Disputes Act of 1978 (41 U.S.C. 601-613). The function of the Board is to decide appeals from decisions of contracting officers relating to a contract made by NASA.

(2) The charter of the Board is set forth in subpart 1 of part 1209 of this chapter. The Board's rules of procedure are set forth in 14 CFR part 1241.

(3) The texts of decisions of the Board are published by Commerce Clearing House, Inc., in Board of Contract Appeals Decisions, and are hereby incorporated by reference. All decisions and orders are available for inspection and for purchase from the Recorder of the Board of NASA Headquarters, Washington, DC. Decisions and orders issued after July, 1967, area available for inspection and for purchase at NASA Information Centers.

(b) *Contract Adjustment Board.* (1) The function of the Board is to consider and dispose of requests by NASA contractors for extraordinary contractual adjustments pursuant to Public Law 85-804 (50 U.S.C. 1431-35) and Executive Order 10789 dated November 14, 1958 (23 FR 8397).

(2) The charter of the Board is set forth at subpart 3 of part 1209 of this chapter. The Board's rules of procedure are set forth at 48 CFR part 1850.

(3) Indexes of and texts of decisions of the Board are available for inspection and for purchase from the Chairperson of the Board, National Aeronautics and Space Administration, Washington, DC 20546, and from the NASA Information Centers.

(c) *Inventions and Contributions Board.* (1) The function of the Board is to consider and recommend to the Administrator the action to be taken with respect to:

(i) Petitions for waiver of rights to any invention or class of inventions made during the performance of NASA contracts; and

(ii) Applications for award for scientific and technical contributions determined to have significant value in the conduct of aeronautical and space activities pursuant to the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2457 (f) and (g), 2458), and the Government Employees Incentive Awards Act (5 U.S.C. 2121-23), respectively.

(2) The charter of the Board is set forth at subpart 4 of part 1209 of this chapter. The Board's rules of procedure are set forth at 14 CFR parts 1240 and 1245.

(3) The decisions of the Board on requests for waiver are available for inspection at NASA Headquarters, Office of Inventions and Contributions Board.

Subpart 4—General Information

§ 1201.400 NASA procurement program.

(a) The Office of Procurement, headed by the Assistant Administrator for Procurement, serves as a central point of control and contact for NASA procurements. Although the procurements may be made by the field installations, selected contracts and contracts of special types are required to be approved by the Assistant Administrator for Procurement prior to their execution. The Office of Procurement is also responsible for formulation of NASA procurement policies and provides overall assistance and guidance to NASA field installations to achieve uniformity in NASA procurement processes.

(b) The NASA procurement program is carried out principally at the NASA field installations listed in subpart 2 of this part and in the "U.S. Government Manual." The Headquarters Acquisition Division is responsible for contracts with foreign governments and foreign commercial organizations, the procurement of materials and services required by Headquarters offices except for minor office supplies and services procured locally, and the award of grants and cooperative agreements for Headquarters. The Headquarters Space Station Freedom Procurement Office is responsible for managing and directing the full range of acquisition functions in support of the Space Station Freedom Program Office.

(c) All procurements are made in accordance with the Federal Acquisition Regulation (FAR) (48 CFR chapter 1) and the NASA Federal Acquisition Regulation Supplement (NASA/FAR Supplement) (48 CFR chapter 18). Copies of these publications are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, on an annual subscription basis.

§ 1201.401 Special document depositories.

NASA provides the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161, with copies of NASA and/or NASA-sponsored unclassified unlimited documents to provide availability to the public. These documents may be reproduced by NTIS and sold at prices established by NTIS. NASA also uses the regional depository libraries established through the Federal Depository Library Program by chapter 19 of title 44 of the U.S. Code under the Government Printing Office (GPO) to make its technical documents and bibliographic tools available to the general public. These depository libraries are responsible for permanent retention of material, interlibrary loan, and reference services.

§ 1201.402 NASA Industrial Applications Centers.

(a) As part of its Technology Utilization Program—a program designed to transfer new aerospace knowledge and innovative technology to nonaerospace sectors of the economy—NASA operates a network of Industrial Applications Centers. These centers serve U.S. industrial clients on a fee paying basis by providing access to literally millions of scientific and technical documents published by NASA and by other research and development organizations. Using computers, the NASA Industrial Applications Centers conduct retrospective and current awareness searches of available literature in accordance with client interests, and assist in the interpretation and adaption of retrieved information to specified needs. Such services may be obtained by contacting one of the following:

(1) Aerospace Research Applications Center (ARAC), Indianapolis Center for Advanced Research, 611 N. Capital Avenue, Indianapolis, IN 46204.

(2) Southern Technology Applications Center, Progress Center, Box 24, 1 Progress Boulevard, Alachua, FL 32615.

(3) NASA/UK Technology Applications Program, University of Kentucky, 10 Kinkead Hall, Lexington, KY 40506-0057.

(4) NASA Industrial Applications Center, 823 William Pitt Union, University of Pittsburgh, Pittsburgh, PA 15260.

(5) New England Research Application Center (NERAC), One Technology Drive, Tolland, CT 06084.

(6) North Carolina Science and Technology Research Center, P.O. Box 12235, Research Triangle Park, NC 27709.

(7) Technology Application Center (TAC), University of New Mexico, Albuquerque, NM 87131.

(8) Kerr Industrial Applications Center, Southeastern Oklahoma State University, Station A, Box 2584, Durant, OK 74701.

(9) NASA Industrial Applications Center, Research Annex, Room 200, University of Southern California, 3716 South Hope Street, Los Angeles, CA 90007.

(10) NASA/SU Industrial Applications Center, Southern University, Department of Computer Science, Baton Rouge, LA 70813-2065.

(b) To obtain access to NASA-developed computer software, contact: Computer Software Management and Information Center (COSMIC), University of Georgia, Athens, GA 30602.

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AUTHORITY: 42 U.S.C. 2451 *et seq.* and E.O. 12356.

SOURCE: 44 FR 34913, June 18, 1979, unless otherwise noted.

Subpart A—Scope

§ 1203.100 Legal basis.

(a) *Executive Order 12356 (hereinafter referred to as "the Order").* The responsibilities and authority of the Administrator of NASA with respect to the original classification of official information or material requiring protection against unauthorized disclosure in the interest of national defense or foreign relations of the United States (hereinafter collectively termed "national security"), and the standards for such classification, are established by the "the Order" (47 FR 14874) and the Information Security Oversight Office Directive No. 1, June 25, 1982;

(b) *E.O. 10865.* Executive Order 10865 (24 FR 1583) requires the Administrator to prescribe by regulation such specific requirements, restrictions and other safeguards as the Administrator may consider necessary to protect:

(1) Releases of classified information to or within United States industry that relate to contracts with NASA; and

(2) Other releases of classified information to industry that NASA has responsibility for safeguarding.

(c) *The National Aeronautics and Space Act.* (1) Section 304(a) of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2451 et seq.), states in part: "The Administrator shall establish such security requirements, restrictions, and safeguards as he deems necessary in the interest of the national security * * *"

(2) Section 303 of the Act states: "Information obtained or developed by

the Administrator in the performance of his functions under this Act shall be made available for public inspection, except (i) information authorized or required by Federal Statute to be withheld, and (ii) information classified to protect the national security: *Provided*, That nothing in this Act shall authorize the withholding of information by the Administrator from the duly authorized committees of the Congress."

[44 FR 34913, June 18, 1979, as amended at 48 FR 5889, Feb. 9, 1983]

§ 1203.101 Other applicable NASA regulations.

(a) Subpart H of this part, "Delegation of Authority to Make Determinations in Original Security Classification Matters."

(b) Subpart I of this part, "NASA Information Security Program Committee."

(c) NASA Handbook 1620.3, "NASA Physical Security Handbook."

Subpart B—NASA Information Security Program

§ 1203.200 Background and discussion.

(a) In establishing a civilian space program, the Congress required NASA to "provide for the widest practicable and appropriate dissemination of information concerning its activities and the results thereof," and for the withholding from public inspection of that information that is classified to protect the national security.

(b) In recognition of the essential requirement for an informed public concerning the activities of its Government, as well as the need to protect certain national security information from unauthorized disclosure, "the Order" was promulgated. It designates the National Aeronautics and Space Administration certain responsibility for matters pertaining to national security and confers on the Administrator of NASA, or such responsible officers or employees as the Administrator may designate, the authority for original classification of official information or material which requires protection in the interest of national security. It also provides for:

(1) Basic classification, downgrading and declassification guidelines;

(2) The issuance of directives prescribing the procedures to be followed in safeguarding classified information or material;

(3) A monitoring system to ensure the effectiveness of the Order;

(4) Appropriate administrative sanctions against officers and employees of the United States Government who are found to be in violation of the Order or implementing directive; and

(5) Classification limitations and restrictions as discussed in §§ 1203.410 and 1203.411.

(c) "The Order" requires the timely identification and protection of that NASA information the disclosure of which would be contrary to the best interest of national security. Accordingly, the determination in each case must be based on a judgment as to whether disclosure of information could reasonably be expected to result in damage to the national security.

[44 FR 34913, June 18, 1979, as amended at 48 FR 5889, Feb. 9, 1983]

§ 1203.201 Information security objectives.

The objectives of the NASA Information Security Program are to:

(a) Ensure that information is classified only when a sound basis exists for such classification and only for such period as is necessary.

(b) Prevent both the unwarranted classification and the overclassification of NASA information.

(c) Ensure the greatest practicable uniformity within NASA in the classification of information.

(d) Ensure effective coordination and reasonable uniformity with other Government departments and agencies, particularly in areas where there is an interchange of information, techniques or hardware.

(e) Provide a timely and effective means for downgrading or declassifying information when the circumstances necessitating the original classification change or no longer exist.

§ 1203.202 Responsibilities.

(a) The Chairperson, NASA Information Security Program Committee

(Subpart I of this part), is responsible for:

(1) Directing the NASA Information Security Program in accordance with NASA policies and objectives and applicable laws and regulations.

(2) Ensuring effective compliance with and implementation of "the Order" and the Information Security Oversight Office Directive No. 1 relating to security classification matters.

(3) Reviewing, in consultation with the NASA Information Security Program Committee, questions, suggestions, appeals and compliance concerning the NASA Information Security Program and making determinations concerning them.

(4) Coordinating NASA security classification matters with NASA installations, the Department of Defense, the Department of Energy and other Government agencies.

(5) Issuing Security Classification Guides for NASA programs and projects.

(6) Developing, maintaining and recommending to the Administrator guidelines for the systematic review covering 30-year-old classified information under NASA's jurisdiction.

(7) Reviewing and coordinating with appropriate offices all appeals of denials of requests for records under sections 552 and 552a of Title 5, United States Code (Freedom of Information and Privacy Acts) when the denials are based on the records continued classification.

(8) Recommending to the Administrator appropriate administrative action to correct abuse or violations of any provision of the NASA Information Security Program, including notifications by warning letter, formal reprimand and to the extent permitted by law, suspension without pay and removal.

(b) All NASA employees are responsible for bringing to the attention of the Chairperson of the NASA Information Security Program Committee any information security problems in need of resolution, any areas of interest wherein information security guidance is lacking, and any other matters likely to impede achievement of the objectives prescribed herein.

(c) Each NASA official to whom the authority for original classification is delegated shall be accountable for the propriety of each classification (see Subpart H) and is responsible for:

(1) Ensuring that classification determinations are consistent with the policy and objectives prescribed above, and other applicable guidelines.

(2) Bringing to the attention of the Chairperson, NASA Information Security Program Committee, for resolution, any disagreement with classification determinations made by other NASA officials.

(3) Ensuring that information and material which no longer requires its present level of protection is promptly downgraded or declassified in accordance with applicable guidelines.

(d) Other Officials-in-Charge of Headquarters Offices are responsible for:

(1) Ensuring that classified information or material prepared within their respective offices is appropriately marked.

(2) Ensuring that material proposed for public release is reviewed to eliminate classified information.

(e) Directors of Field Installations are responsible for:

(1) Developing proposed Security Classification Guides.

(2) Ensuring that classified information or material prepared in their respective installations is appropriately marked.

(3) Ensuring that material proposed for public release is reviewed to eliminate classified information.

(4) Designating Security Classification Officers at their respective installations, to whom responsibilities listed in paragraphs (e) (1), (2), and (3) of this section may be reassigned.

(f) The Senior Security Specialist, NASA Security Office, NASA Headquarters, who serves as a member and Executive Secretary of the NASA Information Security Program Committee, is responsible for the NASA-wide coordination of security classification matters.

(g) The Chief, Information and Physical Security Branch, NASA Security Office, is responsible for establishing procedures for the safeguarding of classified information of material (e.g., accountability, control, access, storage, transmission, and marking) and for ensuring that such procedures are systematically reviewed; and those which are duplicative or unnecessary are eliminated.

[44 FR 34913, June 18, 1979, as amended at 45 FR 3888, Jan. 21, 1980; 48 FR 5890, Feb. 9, 1983; 53 FR 41318, Oct. 21, 1988]

§ 1203.203 Degree of protection.

(a) *General.* Upon determination that information or material must be classsified, the degree of protection commensurate with the sensitivity of the information must be determined. If there is reasonable doubt about the need to classify information, it shall be safeguarded as if it were classified pending a determination by an original classification authority, who shall make this determination within 30 days. If there is reasonable doubt about the appropriate level of classification, it shall be safeguarded at the higher level of classification pending a determination by an original classification authority, who shall make this determination within 30 days.

(b) *Authorized categories of classification.* The three categories of classification, as authorized and defined in "the Order," are set out below. No other restrictive markings are authorized to be placed on NASA classified documents or materials except as expressly provided by statute or by NASA Directives.

(1) *Top Secret.* Top Secret is the designation applied to information or material the unathorized disclosure of which could reasonably be expected to cause exceptionally grave damage to the national security. Examples of exceptionally grave damage include armed hostilities against the United States or its allies; disruption of foreign relations vitally affecting the national security; the compromise of vital national defense plans or complex cryptologic and communications intelligence systems; the revelation of sensitive intelligence operations; and the disclosure of scientific or technological developments vital to national security.

(2) *Secret.* Secret is the designation applied to information or material the unathorized disclosure of which could reasonably be expected to cause serious damage to the national security. Examples of serious damage include disruption of foreign relations significantly affecting the national security; significant impairment of a program or policy directly related to the national security; revelation of significant military plans or intelligence operations; and compromise of significant scientific or technological develpments relating to national security.

(3) *Confidential.* Confidential is the designation applied to that information or material for which the unauthorized disclosure could reasonably be expected to cause damage to the national security.

[44 FR 34913, June 18, 1979, as amended at 48 FR 5890, Feb. 9, 1983]

Subpart C—Classification Principles and Considerations

§ 1203.300 General.

In general, the types of NASA-generated information and material requiring protection in the interest of national security lie in the areas of applied research, technology or operations.

§ 1203.301 Identification of information requiring protection.

Classifiers shall identify the level of classification of each classified portion of a document (including subject and titles), and those portions that are not classified.

§ 1203.302 Combination, interrelation or compilation.

An interrelationship of individual items, classified or unclassified, may result in a combined item requiring a higher classification than that of any of the individual items. Compilations of unclassified information are considered unclassified unless some additional significant factor is added in the process of compilation. For example:

(a) The way unclassified information is compiled may be classified;

(b) The fact that the information is complete for its intended purpose may be classified; or

(c) The fact the compilation represents an official evaluation may be classified. In these cases, the compilations would be classified.

§ 1203.303 Dissemination considerations.

The degree of intended dissemination, use of the information and whether the end purpose to be served renders effective security control impractical are considerations during the classification process. These factors do not necessarily preclude classification, but must be considered in order not to impose security controls which are impractical to enforce.

§ 1203.304 Internal effect.

The effect of security protection on program progess and cost and on other functional activities of NASA should be considered. Impeditive effects and added costs inherent in a security classification must be assessed in light of the detrimental effects on the national security interests which would result from failure to classify.

§ 1203.305 Restricted data.

Restricted Data or Formerly Restricted Data is so classified when originated, as required by the Atomic Energy Act of 1954, as amended. Specific guidance for the classification of Restricted Data is provided in "Classification Guides" published by the Department of Energy.

Subpart D—Guides for Original Classification

§ 1203.400 Specific classifying guidance.

Technological and operational information and material, and in some exceptional cases scientific information falling within any one or more of the following categories, must be classified if its unauthorized disclosure could reasonably be expected to cause damage to the national security. In cases where it is believed that a contrary course of action would better serve the national interests, the matter should be referred to the Chairperson, NASA Information Security Program Committee, for a determination. It is not intended that this list be exclusive; original classifiers are responsible for initially classifying any other type of information which, in their judgment, requires protection under "the Order."

(a) Information which provides the United States, in comparison with other nations, with a significant scientific, engineering, technical, operational, intelligence, strategic, tactical or economic advantage related to national security.

(b) Information which, if disclosed, would significantly diminish the technological lead of the United States in any military system, subsystem or component, and would result in damage to such a system, subsystem or component.

(c) Scientific or technological information in an area where an advanced military application that would in itself be classified is foreseen during exploratory development.

(d) Information which, if known, would:

(1) Provide a foreign nation with an insight into the defense application or the war or defense plans or posture of the United States;

(2) Allow a foreign nation to develop, improve or refine a similar item of defense application;

(3) Provide a foreign nation with a base upon which to develop effective countermeasures;

(4) Weaken or nullify the effectiveness of a defense or military plan, operation, project, weapon system or activity which is vital to the national security.

(e) Information or material which is important to the national security of the United States in relation to other nations when there is sound reason to believe that those nations are unaware that the United States has or is capable of obtaining the information or material; i.e., through intelligence activities, sources, or methods.

(f) Information which if disclosed could be exploited in a manner prejudicial to the national security posture of the United States by discrediting its technological power, capability or intentions.

(g) Information which reveals an unusually significant scientific or technological "breakthrough" which there is sound reason to believe is not known to or within the state-of-the-art capability of other nations. If the "breakthrough" supplies the United States with an important advantage of a technological nature, classification also would be appropriate if the potential application of the information, although not specifically visualized, would afford the United States a significant national security advantage in terms of technological lead time or an economic advantage relating to national security.

(h) Information of such nature that an unfriendly government in possession of it would be expected to use it for purposes prejudicial to U.S. national security and which, if classified, could not be obtained by an unfriendly power without a considerable expenditure of resources.

(i) Information which if disclosed to a foreign government would enhance its military research and development programs to the detriment of U.S. counterpart or competitive programs.

(j) Operational information pertaining to the command and control of space vehicles, the possession of which would facilitate malicious interference with any U.S. space mission, that might result in damage to the national security.

(k) Information which if disclosed could jeopardize the foreign relations or activities of the United States; for example, the premature or unauthorized release of information relating to the subject matter of international negotiations, foreign government information or information regarding the placement or withdrawal of NASA tracking stations on foreign territory.

(l) United States Government programs for safeguarding nuclear materials or facilities.

(m) Other categories of information which are related to national security and which require protection against unauthorized disclosure as may be determined by the Administrator. The Chairperson, NASA Information Security Program Committee, will promptly inform the Director, Information Security Oversight Office, General Services Administration (GSA) of such determinations.

[44 FR 34913, June 18, 1979, as amended at 48 FR 5890, Feb. 9, 1983]

§ 1203.401 Effect of open publication.

Public disclosure, regardless of source or form, of information currently classified or being considered for classification does not preclude initial or continued classification. However, such disclosure requires an immediate reevaluation to determine whether the information has been compromised to the extent that downgrading or declassification is indicated. Similar consideration must be given to related items of information in all programs, projects, or items incorporating or pertaining to the compromised items of information. In these cases, if a release were made or authorized by an official Government source, classification of clearly identified items may no longer be warranted. Questions as to the propriety of continued classification should be referred to the Chairperson, NASA Information Security Program Committee.

§ 1203.402 Classifying material other than documentation.

Items of equipment or other physical objects may be classified only where classified information may be derived by visual observation of internal or external appearance, structure, operation, test, application or use. The overall classification assigned to equipment or objects shall be at least as high as the highest classification of any of the items of information which may be revealed by the equipment or objects, but may be higher if the classifying authority determines that the sum of classified or unclassified information warrants such higher classification. In every instance where classification of an item of equipment or object is determined to be warranted, such determination must be based on a finding that there is at least one aspect of the item or object which requires protection. If mere knowledge of the existence of the equipment or object would compromise or nullify the reason or justification for its classification, the fact of its existence should be classified.

§ 1203.403 State-of-the-art and intelligence.

A logical approach to classification requires consideration of the extent to which the same or similar information available from intelligence sources is known or is available to others. It is also important to consider whether it is known publicly, either domestically or internationally, that the United States has the information or even is interested in the subject matter. The known state-of-the-art in other nations is an additional substantive factor requiring consideration.

§ 1203.404 Handling of unprocessed data.

It is the usual practice to withhold the release of raw scientific data received from spacecraft until it can be calibrated, correlated and properly interpreted by the experimenter under the monitorship of the cognizant NASA office. During this process, the data are withheld through administrative measures, and it is not necessary to resort to security classification to prevent premature release. However, if at any time during the processing of raw data it becomes apparent that the results require protection under the criteria set forth in this Subpart D, it is the responsibility of the cognizant NASA office to obtain the appropriate security classification.

§ 1203.405 Proprietary information.

Proprietary information made available to NASA is subject to examination for classification purposes under the criteria set forth in this Subpart D. Where the information is in the form of a proposal and accepted by NASA for support, it should be categorized in accordance with the criteria of § 1203.400. If NASA does not support the proposal but believes that security classification would be appropriate under the criteria of § 1203.400 if it were under Government jurisdiction, the contractor should be advised of the reasons why safeguarding would be appropriate, unless security considerations preclude release of the explanation to the contractor. NASA should identify the Government department, agency or activity whose national security interests might be involved and the contractor should be instructed to protect the proposal as though classified pending further advisory classification opinion by the Government activity whose interests are involved. If such a Government activity cannot be identified, the contractor should be advised that the proposal is not under NASA jurisdiction for classification purposes, and that the information should be sent, under proper safeguards, to the Director, Information Security Oversight Office, General Services Administration, Washington, D.C. 20405, for a determination.

§ 1203.406 Additional classification factors.

In determining the appropriate classification category, the following additional factors should be considered:

(a) *Uniformity within government activities.* The effect classification will have on technological programs of other Government departments and agencies should be considered. Classification of official information must be reasonably uniform within the Government.

(b) *Applicability of classification directives of other Government agencies.* It is necessary to determine whether authoritative classification guidance exists elsewhere for the information under consideration which would make it necessary to assign a higher classification than that indicated by the applicable NASA guidance. Generally, the classification by NASA should not be higher than that of equivalent information in other departments or agencies of the Government.

§ 1203.407 Duration of classification.

(a) Information shall be classified as long as required by national security considerations. When it can be determined, a specific date or event for declassification shall be set by the original classification authority at the time the information is originally classified.

(b) Information classified under predecessor orders and marked for declassification review shall remain classified until reviewed for declassification under the provisions of the "the Order."

[48 FR 5890, Feb. 9, 1983]

§ 1203.408 Assistance by installation security classification officers.

Installation Security Classification Officers, as the installation point-of-contact, will assist installation personnel in:

(a) Interpreting security classification guides and classification assignments for the installation.

(b) Answering questions and considering suggestions concerning security classification matters.

(c) Ensuring a continuing review of classified information for the purpose of declassifying or downgrading in accordance with Subpart E of this part.

(d) Reviewing and approving, as the representative of the contracting officer, the DD Form 254, Contract Security Classification Specification, issued to contractors by the installation.

§ 1203.409 Exceptional cases.

(a) In those cases where a person not authorized to classify information orginates or develops information which is believed to require classification, that person should safeguard the material as though it were classified until it has been evaluated and a decision made by an appropriate classifying authority. For NASA employees the classifying authority is normally the Installation Security Classification Officer. Persons other than NASA employees should forward, under appropriate safeguards, material in which NASA has primary interest to the NASA Information Security Program Committee, Security Division, Washington, DC 20546 for a classification determination.

(b) Information in which NASA does not have primary interest shall be returned promptly, under appropriate safeguards, to the sender in accordance with § 1203.405.

(c) Material received from another agency for a NASA security classification determination shall be processed within 30 days. If a classification cannot be determined during that period, the material shall be sent, under appropriate safeguards, to the Director, Information Security Oversight Office, GSA, for a determination.

§ 1203.410 Limitations.

(a) Classification may not be used to conceal violations of law, inefficiency of administrative error; to prevent embarrassment to a person, organization or agency; or to restrain competition.

(b) Basic scientific research information not clearly related to the national security may not be classified.

(c) A product of non-government research and development that does not incorporate or reveal classified information to which the producer or developer was given prior access may not be classified under this Part 1203 until and unless the Government acquires a proprietary interest in the product. This part does not affect the provisions of the Patent Secrecy Act of 1952 (35 U.S.C. 181-188).

(d) References to classified documents that do not disclose classified information may not be classified or used as a basis for classification.

(e) Classification may not be used to limit dissemination of information that is not classifiable under the provisions of this part or to prevent or delay the public release of such information.

(f) Information may be classified or reclassified after receipt of a request for it under the Freedom of Information Act (5 U.S.C. 552) or the Privacy Act of 1974 (5 U.S.C. 552a), or the mandatory review provisions of "the Order" if such classification meets the requirements of "the Order" and is accomplished personally on a document-by-document basis by an official with original Top Secret classification authority.

(g) The Administrator, the Chairperson, NASA Information Security Program Committee, or an official with original Top Secret classification authority may reclassify information previously declassified and disclosed if it is determined in writing that (1) The information requires protection in the interest of national security; and (2) the information may reasonably be recovered. These reclassification actions shall be reported promptly to the Director of the Information Security Oversight Office, GSA.

[44 FR 34913, June 18, 1979, as amended at 48 FR 5890, Feb. 9, 1983]

§ 1203.411 Restrictions.

(a) Except as provided by directives issued by the President through the National Security Council, classified information originating in one agency may not be disseminated outside any other agency to which it has been made available without the consent of the originating agency. For purposes of this section, the Department of Defense shall be considered one agency.

(b) Classified information shall not be disseminated outside the Executive Branch except under conditions that ensure the information will be given protection equivalent to that afforded within the Executive Branch.

[48 FR 5890, Feb. 9, 1983]

§ 1203.412 Classification guides.

(a) *General.* A classification guide, based upon classification determinations made by appropriate program and classification authorities, shall be issued for each classified system, program or project. Classification guides shall:

(1) Identify the information elements to be protected, using categorization and subcategorization to the extent necessary to ensure that the information involved can be readily and uniformly identified.

(2) State which of the classification designations (i.e., Top Secret, Secret or Confidential) apply to the identified information elements.

(3) State the duration of each specified classification in terms of a period of time or future event. Whenever a specific time or future event for declassification cannot be predetermined, the following notation will be used: DECLASSIFY ON: Originating Agency's Determination Required or "OADR."

(4) Indicate specifically that the designations, time limits, markings and other requirements of "the Order" are to be applied to information classified pursuant to the guide.

(5) Be approved personally and in writing by an official with original Top Secret classification authority; the identity of the official will be shown on the guide. Such approval constitutes an original classification decision. Normally, all guides will be approved by the Chairperson, NASA Information Security Program Committee, whose office will maintain a list of all classification guides in current use.

(b) *Review of classification guides.* Classification guides shall be reviewed by the originator for currency and accuracy not less than once every two years. Changes shall be in strict conformance with the provisions of this Part 1203 and shall be issued promptly. If no changes are made, the originator shall so annotate the record copy and show the date of the review.

[44 FR 34913, June 18, 1979, as amended at 48 FR 5891, Feb. 9, 1983]

Subpart E—Derivative Classification

§ 1203.500 Use of derivative classification.

The application of derivative classification markings is a responsibility of those who incorporate, paraphrase, restate, or generate in new form information that is already classified, and of those who apply markings in accordance with instructions from an authorized original classifier or in accordance with an authorized classification guide. If a person who applied derivative classification markings believes that the paraphrasing, restating, or summarizing of classified information has changed the level of or removed the basis for classification, that person must consult for a determination with an appropriate official of the originating agency or office of origin who has the authority to upgrade, downgrade, or declassify the information.

[48 FR 5891, Feb. 9, 1983]

§ 1203.501 Applying derivative classification markings.

Persons who apply derivative classification markings shall:

(a) Observe and respect original classification decisions;

(b) Verify the information's current level of classification so far as practicable before applying the markings; and

(c) Carry forward to newly created documents any assigned authorized markings. The declassification date or event that provides the longest period of classification shall be used for documents classified on the basis of multiple sources.

[44 FR 34913, June 18, 1979, as amended at 48 FR 5891, Feb. 9, 1983]

Subpart F—Declassification and Downgrading

§ 1203.600 Policy.

Information shall be declassified or downgraded as soon as national security considerations permit. NASA reviews of classified information shall be coordinated with other agencies that have a direct interest in the subject matter. Information that continues to meet the classification requirements prescribed by § 1203.400 despite the passage of time will continue to be protected in accordance with "the Order."

[48 FR 5891, Feb. 9, 1983]

§ 1203.601 Responsibilities.

Officials authorized original classification authority may declassify or downgrade information that is subject to the final classification jurisdiction of NASA and shall take such action in accordance with the provisions of this Subpart F.

§ 1203.602 Authorization.

Information shall be declassified or downgraded by the official who authorized the original classification, if that official is still serving in the same position, the originator's successor, a supervisory official of either, or officials delegated such authority in writing by the Administrator or the Chairperson, NASA Information Security Program Committee.

[48 FR 5891, Feb. 9, 1983]

§ 1203.603 Systematic review for declassification.

(a) *General.* (1) Except for foreign government information as provided in Subpart G of this part, classified information constituting permanently valuable records of the government as defined by 44 U.S.C. 2103, and information in the possession and control of the Administrator of General Services Administration pursuant to 44 U.S.C. 2107 or 2107 note, shall be reviewed for declassification as it becomes 30 years old.

(2) Systematic review for declassification of classified cryptologic information will be coordinated through the National Security Agency.

(3) Systematic review for declassification of classified information pertaining to intelligence activities (including special activities) or intelligence sources or methods will be coordinated through the Central Intelligence Agency.

(4) The Chairperson, NASA Information Security Program Committee, shall designate experienced personnel to assist the Archivist of the United States in the systematic review of 30-year old U.S. originated information and 30-year old foreign information. Such personnel shall:

(i) Provide guidance and assistance to National Archives and Records Service employees in identifying and separating documents and specific categories of information within documents which are deemed to require continued classification; and

(ii) Develop reports of information or document categories so separated, with recommendations concerning continued classification.

(b) *Systematic review guidelines.* The Chairperson, NASA Information Security Program Committee, shall develop, in coordination with NASA organizational elements, guidelines for the systematic review for declassification of 30-year old classified information under NASA's jurisdiction. (See Subpart G of this part, Foreign Government Information.) The guidelines shall state specific limited categories of information which, because of their national security sensitivity, should not be declassified automatically but should be reviewed item-by-item to determine whether continued protection beyond 30 years is needed. These guidelines are authorized for use by the Archivist of the United States and, with the approval of the Administrator, by an agency having custody of the information covered by the guidelines. All information, except foreign government information, cryptologic information, and information pertaining to intelligence sources or methods, not identified in these guidelines as requiring review and for which a prior automatic declassification date has not been established shall be declassified automatically at the end of 30 years from the date of original classification. These guidelines shall be reviewed at least every 5 years and revised as necessary unless an earlier review for revision is requested by the Archivist of the United States. Copies of the declassification guidelines promulgated by NASA will be provided to the Information Security Oversight Office, GSA.

(c) *Systematic review procedures.* (1) All security classified records 30 years old or older, whether held in storage areas under installation control or in Federal Records Centers, will be surveyed to identify those that require scheduling for future disposition.

(2) All NASA information or material in the custody of the National Archives and Records Service that is permanently valuable and more than 30 years old is to be systematically reviewed for declassification by the Archivist of the United States with the assistance of the personnel designated for the purpose pursuant to paragraph (a)(4)(i) of this section. The Archivist shall refer to NASA that information or material which NASA has indicated requires further review. In the case of 30-year old information or material in the custody of NASA installations, such review will be accomplished by the custodians of the information or material. The installation having primary jurisdication over the information or material received from the Archivist or in its custody, shall proceed as follows:

(i) Classified information or material over which NASA exercises exclusive or final original classification authority and which is to be declassified in accordance with the systematic review guidelines developed under paragraph (b) of this section shall be so marked.

(ii) Classified information or material over which NASA exercises exclusive or final original classification authority and which, in accordance with the systematic review guidelines developed under paragraph (b) of this section, is to be kept protected, shall be listed by category by the responsible custodian and referred to the Chairperson, NASA Information Security Program Committee. This listing shall:

(A) Identify the information or material involved.

(B) Recommend classification beyond 30 years to a specific event scheduled to happen or a specific period of time or, the alternative, recommend: DECLASSIFY ON: Originating Agency's Determination Required or "OADR."

(iii) The Administrator shall consider and determine which category shall be kept classified and the dates or event for declassification. Whenever a specific time or future event for declassification cannot be predetermined, the following notation will be applied: DECLASSIFY ON: Originating Agency's Determination Required or "OADR." The Archivist of the United States will be notified in writing of this decision.

(d) *Declassification by the Director of the Information Security Oversight Office, GSA.* If the Director of the Information Security Oversight Office, GSA, determines that NASA information is classified in violation of "the Order," the Director may require the information to be declassified. Any such decision by the Director may be appealed through the NASA Information Security Program Committee to the National Security Council. The information shall remain classified pending a prompt decision on the appeal.

[48 FR 5891, Feb. 9, 1983]

§ 1203.604 Mandatory review for declassification.

(a) *Information covered.* All information classified under "the Order" or predecessor orders, except as provided at § 1203.604(b) shall be subject to a review for declassification by the originating agency, if:

(1) The request is made by a United States citizen or permanent resident alien, a Federal agency, or a State or local government; and

(2) The request describes the document or material containing the information with sufficient specificity to enable the agency to locate it with a

reasonable amount of effort. After review, the information or any reasonable segregable portion thereof that no longer requires protection shall be declassified and released unless withholding is otherwise warranted under applicable law.

(b) *Presidential papers.* (1) Information originated by a President, the White House Staff, by committees, commissions, or boards appointed by the President, or others specifically providing advice and counsel to a President or acting on behalf of a President is exempted from the provisions of § 1203.604(a).

(2) The Archivist of the United States shall have the authority to review, downgrade and declassify information under the control of the Administrator of General Services Administration or the Archivist pursuant to sections 2107, 2107 note, or 2203 of Title 44, U.S. Code. Review procedures developed by the Archivist shall provide for consultation with NASA in matters of primary subject interest to NASA.

(c) *Submission of requests for review.* Requests for mandatory review of classified information shall be submitted in accordance with the following:

(1) Requests originating within NASA shall, in all cases, be submitted directly to the NASA installation which originated the information.

(2) For most expeditious action, requests from other Governmental agencies or from members of the public should be submitted directly to NASA installations which originated the material, or, if the originating component is not known, the requestor may submit the request to:

(i) The Chairperson, NASA Information Security Program Committee; or the head of the NASA organization most concerned with the subject matter of the material requested; or

(ii) The office designated to receive requests for records specifically citing the Freedom of Information Act pursuant to Part 1206 of this chapter.

(d) *Requirement for processing.* (1) Requests which are submitted under the Freedom of Information Act shall be processed in accordance with Part 1206 of this chapter.

(2) Other requests for declassification review and release of information shall be processed in accordance with the provisions of this section, subject to the following conditions:

(i) The request is in writing and reasonably describes the information sought with sufficient particularity to enable the installation to identify it.

(ii) The requestor shall be asked to correct a request that does not comply with paragraph (d)(2)(i) of this section, to provide additional information or to narrow the scope of the request and shall be notified that no action will be taken until the requestor complies.

(iii) If the request requires the rendering of services for which fees may not be charged under Part 1206, but may be charged under 31 U.S.C. 483a (1976), the rates prescribed in § 1206.700 shall be used, if appropriate.

(e) *Processing of requests.* Requests that meet the requirements of paragraph (d)(2) of this section will be processed as follows:

(1) NASA installation action upon the initial request shall be completed within 60 days.

(2) Receipt of the request shall be acknowledged promptly. The NASA installation shall determine whether, under the declassification provisions of this Part 1203, the requested information may be declassified and, if so, shall make such information available to the requestor, unless withholding is otherwise warranted under applicable law. If the information may not be released in whole or in part, the requestor shall be given a brief statement of the reasons for denial, a notice of the right to appeal the determination to the Chairperson, NASA Information Security Program Committee, National Aeronautics and Space Administration, Washington, DC 20546, and a notice that such an appeal must be filed within 60 days in order to be considered.

(3) All appeals of denials of requests for declassification shall be acted upon and determined finally within 30 days after receipt and the requestor shall be advised that the appeal determination is final. If continued classification is required under the provisions of this

Part 1203, the requestor shall be notified of the reasons thereof.

(4) The declassification and release of foreign government information that is subjected to mandatory review under this section shall be determined only in accordance with § 1203.703.

(5) When a NASA installation receives any request for declassification of information in documents in its custody that was classified by another NASA installation or Government agency, it shall refer copies of the request and the requested documents to the originating installation or agency for processing, and may, after consultation with the originating installation or agency, inform the requester of the referral. In cases in which the originating NASA installation determines in writing that a response under § 1203.604(f) is indicated, such cases will be promptly forwarded to the Chairperson, NASA Information Security Program Committee, for final resolution and appropriate response.

(f) *Neutral response.* In response to a request for information under the Freedom of Information Act, the Privacy Act of 1974, or the mandatory review provisions of "the Order," NASA shall refuse to confirm or deny the existence or non-existence of requested information whenever the fact of its existence or non-existence is itself classifiable under "the Order."

(g) *Declassification of transferred documents or material*—(1) *Material officially transferred.* In the case of classified information or material transferred by or pursuant to statute or Executive Order to NASA in conjunction with a transfer of functions (not merely for storage purposes) for NASA's use and as part of its official files or property, as distinguished from transfers merely for purposes of storage, NASA shall be deemed to be the original classifying authority over such material for purposes of downgrading and declassification.

(2) *Material not officially transferred.* When any NASA installation has in its possession classified information or material originated by an agency which has since ceased to exist and that information has not been officially transferred to another department or agency, or when it is impossible for the possessing NASA installation to identify the originating agency, and a review of the material indicates that it should be downgraded or declassified, the possessing NASA installation shall be deemed to be the originating agency for the purpose of declassifying or downgrading such material. If it appears probable that another agency or another NASA organization may have a substantial interest in whether the classification of any particular information should be maintained, the possessing NASA installation shall not exercise the power conferred upon it by this paragraph, until after consultation with any other agency or NASA organization having an interest in the subject matter.

(3) *Transfer for storage or retirement.* (i) Insofar as practicable, classified documents shall be reviewed to determine whether or not they can be downgraded or declassified prior to being forwarded to records centers or to the National Archives for storage. Any downgrading or declassification determination shall be indicated on each document by appropriate markings.

(ii) Classified information transferred to the General Services Administration for accession into the Archives of the United States shall be downgraded or declassified by the Archivist of the United States in accordance with "the Order," the directives of the Information Security Oversight Office, GSA, and NASA guidelines.

(h) *Downgrading and declassification actions*—(1) *Notification of changes in classification or declassification.* When classified material has been marked with specific dates or events for downgrading or declassification, it is not necessary to issue notices of such actions to any holders. However, when such actions are taken earlier than originally scheduled, or the duration of classification is shortened, the authority making such changes shall, to the extent practicable, ensure prompt notification to all addressees to whom the information or material was originally transmitted. The notification shall specify the marking action to be taken, the authority therefor, and the effective date. Upon receipt of notification, recipients shall effect the proper changes and shall notify addressees to whom they have transmitted the classified information or material.

(2) *Posted notice.* If prompt remarking of large quantities would be unduly burdensome, the custodian may attach declassification, downgrading, or upgrading notices to the storage unit in lieu of the remarking action otherwise required. Each notice shall indicate the change, the authority for the action, the date of the action, and the storage units to which it applies. Items withdrawn from such storage units shall be promptly remarked. However, when information subject to a posted downgrading or declassification notice is withdrawn from one storage unit solely for transfer to another, or a storage unit containing such information is transferred from one place to another, the transfer may be made without remarking if the notice is attached to or remains with each shipment.

(i) *Foreign Relations Series.* In order to permit the State Department editors of *Foreign Relations of the United States* to meet their mandated goal of publishing 20 years after the event, NASA shall assist these editors by facilitating access to appropriate classified materials in its custody and by expediting declassification review of items from its files selected for publication.

[44 FR 34913, June 18, 1979, as amended at 45 FR 3888, Jan. 21, 1980; 48 FR 5892, Feb. 9, 1983; 53 FR 41318, Oct. 21, 1988]

Subpart G—Foreign Government Information

§ 1203.700 Identification.

In order to qualify as foreign government information, information must fall into one of the two following categories:

(a) Information provided to the United States by a foreign government or international organization of governments, such as the North Atlantic Treaty Organizatiuon (NATO), where the United States has undertaken an obligation, expressed or implied, to keep the information in confidence. The information is considered to have been provided in confidence if it is marked in a manner indicating it is to be treated in confidence or if the circumstances of the delivery indicate that the information be kept in confidence.

(b) Information requiring confidentiality produced by the United States pursuant to a written, joint arrangement with a foreign government or international organization of governments. A written, joint arrangement may be evidenced by an exchange of letters, a memorandum of understanding, or other written record of the joint arrangement.

§ 1203.701 Classification.

(a) Foreign government information that is classified by a foreign entity shall either retain its original classification designation or be marked with a United States classification designation that will ensure a degree of protection equivalent to that required by the entity that furnished the information. Original classification authority is not required for this purpose.

(b) Foreign government information that was not classified by a foreign entity but was provided to NASA with the expressed or implied obligation that it be held in confidence must be classified. "The Order" states that unauthorized disclosure of foreign government information, the identity of a confidential foreign source, or intelligence sources or methods is presumed to cause damage to the national security. Therefore, such foreign government information shall be classified at least Confidential. However, at the time of classification, judicious consideration shall be given to the sensitivity of the subject matter and the impact of its unauthorized disclosure upon both the United States and the originating foreign government or organization of governments in order to determine the most appropriate level of classification. Levels above Confidential must be assigned by an original classification authority.

[44 FR 34913, June 18, 1979, as amended at 48 FR 5892, Feb. 9, 1983]

§ 1203.702 Duration of classification.

Unless the guidelines for the systematic review of 30-year old foreign government information developed pursuant to § 1203.603(b) prescribe dates or events for declassification:

(a) Foreign government information shall not be assigned a date or event for declassification unless such is specified or agreed to by the foreign entity.

(b) Foreign government information classified after December 1, 1978, shall be annotated: DECLASSIFY ON: Originating Agency's Determination Required or "OADR."

[48 FR 5893, Feb. 9, 1983]

§ 1203.703 Declassification.

(a) Information classified in accordance with § 1203.400 shall not be declassified automatically as a result of any unofficial publication or inadvertent or unauthorized disclosure in the United States or abroad of identical or similar information.

(b) Following consultation with the Archivist of the United States and where appropriate, with the foreign government or international organization concerned and with the assistance of the Department of State, NASA will issue guidelines for the systematic review of 30-year old foreign government information that will apply to foreign government information of primary concern to NASA. These guidelines are authorized for use by the Archivist of the United States and, with the approval of NASA, by an agency having custody of such information. The Chairperson, NASA Information Security Program Committee, will initiate administrative functions necessary to effect review of these guidelines at least once every 5 years and submit recommendations to the Administrator based on these reviews. If, after applying the guidelines to 30-year old foreign government information, a determination is made by the reviewer that classification is necessary, a date for declassification or DECLASSIFY ON: Originating Agency's Determination Required or "OADR" shall be shown on the face of the document.

(c) Requests for mandatory review for declassification of foreign government information shall be processed and acted upon in accordance with the provisions of § 1203.603 except that foreign government information will be declassified only in accordance with the guidelines developed for that purpose under § 1203.702 and after consultation with other Government agencies with subject matter interest as necessary. In those cases where these guidelines cannot be applied to the foreign government information requested, the foreign originator normally should be consulted, through appropriate channels, prior to final action on the request. However, when the responsible NASA installation knows the foreign originator's view toward declassification or continued classification of the types of information requested, consultation with the foreign originator is not necessary.

(d) Requests for mandatory review for declassification of foreign government information which NASA has not received or classified shall be referred to the Government agency having a primary interest. The requestor shall be advised of the referral.

[44 FR 34913, June 18, 1979, as amended at 48 FR 5893, Feb. 9, 1983]

Subpart H—Delegation of Authority To Make Determinations in Original Classification Matters

SOURCE: 53 FR 45259, Nov. 9, 1988, unless otherwise noted.

§ 1203.800 Delegations.

(a) The NASA officials listed in paragraph (b) of this section are authorized to make, modify, or eliminate security classification assignments to information under their jurisdiction for which NASA has original classification authority. Such actions shall be in accordance with currently applicable criteria, guidelines, laws, and regulations; and they shall be subject to any contrary determination that has been made by the Chairperson of the NASA Information Security Program Committee or by any other NASA official authorized to make such a determination.

(b) Designated Officials.

(1) *TOP SECRET Classification Authority.*

(i) Administrator.

(ii) Deputy Administrator.

(iii) Associate Deputy Administrator.

(iv) Chairperson, NASA Information Security Program Committee.

(2) *SECRET AND CONFIDENTIAL Classification Authority.*

(i) Officials listed in paragraph (b)(1) of this section.

(ii) Associate Administrator for Space Flight.

(iii) Associate Administrator for Space Science and Applications.

(iv) Associate Administrator for External Relations.

(v) Associate Administrator for Management.

(vi) Associate Administrator for Aeronautics and Space Technology.

(vii) Associate Administrator for Space Operations.

(viii) Associate Administrator for Space Station.

(ix) Associate Administrator for Safety, Reliability, Maintainability, and Quality Assurance.

(x) General Counsel.

(xi) Director, NASA Security Office.

(xii) Director, International Relations Division.

(xiii) Executive Secretary, NASA Information Security Program Committee.

(xiv) Field Installation Directors.

(xv) Manager, NASA Resident Office—JPL.

(xvi) Installation Security Classification Officers.

(xvii) Such other officials as may be delegated original classification authority.

(c) Written requests for original classification authority shall be forwarded to the Executive Secretary, NASA Information Security Program Committee, with appropriate justification appended thereto. The Executive Secretary will submit such requests to the Committee Chairperson for a determination by the Committee regarding the validity of the requests. Findings and recommendations of the Committee will then be submitted by the Committee Chairperson to the Administrator for approval.

(d) The Executive Secretary shall maintain a list of all delegations of original classification authority by name or title of the position held.

(e) The NASA Information Security Program Committee shall conduct a periodic review of delegation lists to ensure that the officials so designated have demonstrated a continuing need to exercise such authority.

(f) Original classification authority shall not be delegated to persons who only reproduce, extract, or summarize classified information, or who only apply classification markings derived from source material or as directed by a classification guide.

§ 1203.801 Redelegation.

Redelegation of TOP SECRET, SECRET, or CONFIDENTIAL original classification authority is not authorized.

§ 1203.802 Reporting.

The officials to whom original classification authority has been delegated herein shall ensure that feedback is provided to the Administrator through the NASA Information Security Program Committee. The Chairperson of the Committee shall keep the Administrator currently informed of all significant actions, problems, or other matters of substance related to the exercise of the authority delegated hereunder.

Subpart I—NASA Information Security Program Committee

SOURCE: 54 FR 6881, Feb. 15, 1989, unless otherwise noted.

§ 1203.900 Establishment.

Pursuant to Executive Order 12356, "National Security Information," and the National Aeronautics and Space Act of 1958, as amended, there is established a NASA Information Security Program Committee (hereinafter referred to as the Committee) as part of the permanent administrative structure of NASA. The Director, NASA Security Office, is designated to act as the Chairperson of the Committee. The Senior Security Specialist, Classification Management and Physical Security Section, NASA Security Office, is designated to act as the Committee Executive Secretary.

§ 1203.901 Responsibilities.

(a) The Chairperson reports to the Administrator concerning the management and direction of the NASA Information Security Program as provided for in Subpart B of this part. In this connection, the Chairperson is supported and advised by the Committee.

(b) The Committee shall act on all appeals from denials of declassification requests and on all suggestions and complaints with respect to administration of the NASA Information Security Program as provided for in Subpart B of this part.

(c) The Executive Secretary of the Committee shall maintain all records produced by the Committee, its subcommittees, and its ad hoc panels.

(d) The NASA Security Office, NASA Headquarters, will provide staff assistance, and investigative and support services for the Committee.

§ 1203.902 Membership.

The Committee will consist of the Chairperson and Executive Secretary. In addition, each of the following NASA officials will nominate one person to Committee membership:

(a) Associate Administrators for:

(1) Aeronautics and Space Technology.

(2) Space Science and Applications.

(3) Space Flight.

(4) Space Station.

(5) Space Operations.

(6) Management.

(7) External Relations.

(8) Safety, Reliability, Maintainability and Quality Assurance.

(b) Associate Deputy Administrator.

(c) General Counsel.

Other members may be designated upon specific request of the Chairperson.

§ 1203.903 Ad hoc committees.

The Chairperson is authorized to establish such ad hoc panels or subcommittees as may be necessary in the conduct of the Committee's work.

§ 1203.904 Meetings.

(a) Meetings will be held at the call of the Chairperson.

(b) Records produced by the Committee and the minutes of each meeting will be maintained by the Executive Secretary.

PART 1203a—NASA SECURITY AREAS

Sec.
1203a.100 Purpose and scope.
1203a.101 Definitions.
1203a.102 Establishment, maintenance, and revocation of security areas.
1203a.103 Access to security areas.
1203a.104 Violation of security areas.
1203a.105 Implementation by field and component installations.

Authority: 18 U.S.C. 799.

Source: 38 FR 8056, Mar. 28, 1973, unless otherwise noted.

§ 1203a.100 Purpose and scope.

(a) To insure the uninterrupted and successful accomplishment of the NASA mission, certain designated security areas may be established and maintained by NASA installations and component installations in order to provide appropriate and adequate protection for facilities, property, or classified information and material in the possession or custody of NASA or NASA contractors located at NASA installations and component installations.

(b) This Part 1203a sets forth:

(1) The designation and maintenance of security areas,

(2) The responsibilities and procedures in connection therewith, and

(3) The penalties that may be enforced through court actions against unauthorized persons entering security areas.

§ 1203a.101 Definitions.

For the purpose of this part, the following definitions apply:

(a) *Security area.* A physically defined area, established for the protection or security of facilities, property, or classfied information and material in the possession or custody of NASA or a NASA contractor located at a NASA installation or component installation, entry to which is subject to security measures, procedures, or controls. Security areas which may be established are:

(1) *Restricted area.* An area wherein security measures are applied primari-

ly for the safeguarding or the administrative control of property or to protect operations and functions which are vital or essential to the accomplishment of the mission assigned to a NASA installation or component installation.

(2) *Limited area.* An area wherein security measures are applied primarily for the safeguarding of classified information and material or unclassified property warranting special protection and in which the uncontrolled movement of visitors would permit access to such classified information and material or property, but within which area such access may be prevented by appropriate visitor escort and other internal restrictions and controls.

(3) *Closed area.* An area wherein security measures are applied primarily for the purpose of safeguarding classified information and material; entry to the area being equivalent, for all practical purposes, to access to such classified information and material.

(b) *Temporary security area.* A designated interim security area, the need for which will not exceed 30 days from date of establishment. A temporary security area may also be established on an interim basis, pending approval of its establishment as a permanent security area.

(c) *Permanent security area.* A designated security area, the need for which will exceed 30 days from date of establishment.

§ 1203a.102 Establishment, maintenance, and revocation of security areas.

(a) *Establishment.* (1) Directors of NASA field and component installations, and the Director of Headquarters Administration for NASA Headquarters (including component installations) may establish, maintain, and protect such areas as restricted, limited, or closed depending upon the opportunity available to unauthorized persons either to:

(i) Obtain knowledge of classified information,

(ii) Damage or remove property, or to

(iii) Disrupt Government operations.

(2) The concurrence of the Director of Security NASA Headquarters, will be obtained prior to the establishment of a permanent security area.

(3)(i) As a minimum, the following information will be submitted to the Director of Security 15 workdays prior to establishment of each permanent security area:

(*a*) The name and specific location of the NASA field or component installation, facility, or property to be protected.

(*b*) A statement that the property is owned by, or leased to, the United States for use by NASA or is the property of a NASA contractor located on a NASA installation or component installation.

(*c*) Designation desired: i.e., restricted, limited, or closed.

(*d*) Specific purpose(s) for the establishment of a security area.

(ii) For those areas currently designated by the installation as "permanent security areas," the information set forth in paragraph (d)(3)(i) of this section will be furnished to the Security Division, NASA Headquarters, within 30 workdays of the effective date of this part.

(b) *Maintenance.* The security measures which may be utilized to protect such areas will be determined by the requirements of individual situations. As a minimum such security measures will:

(1) Provide for the posting of signs at entrances and at such intervals along the perimeter of the designated area as to provide reasonable notice to persons about to enter thereon. The Director of Security, NASA Headquarters, upon request, may approve the use of signs that are now being used pursuant to a State statute.

(2) Regulate authorized personnel entry and movement within the area.

(3) Deny entry of unauthorized persons or property.

(4) Prevent unauthorized removal of classified information and material or property from a NASA installation or component installation.

(c) *Revocation.* Once the need for an established permanent security area no longer exists, the area will be returned immediately to normal controls and procedures or as soon as practicable. The Director of Security will be informed of permanent security area revocations within 15 workdays.

§ 1203a.103 Access to security areas.

(a) Only those NASA employees, NASA contractor employees, and visitors who have a need for such access and who meet the following criteria may enter a security area:

(1) *Restricted area.* Be authorized to enter the area alone or be escorted by or under the supervision of a NASA employee or NASA contractor employee who is authorized to enter the area.

(2) *Limited area.* Possess a security clearance equal to the level of the classified information or material involved or be the recipient of a satisfactorily completed national agency check if classified material or information is not involved. Personnel who do not meet the requirements for unescorted access may be escorted by a NASA employee or NASA contractor employee who meets the access requirements and has been authorized to enter the area.

(3) *Closed area.* Possess a security clearance equal to the classified information or material involved.

(b) The directors of NASA field and component installations, and the Director of Headquarters Administration for NASA Headquarters (including component installations) may rescind previously granted authorizations to enter a security area when an individual's continued presence therein is no longer required, threatens the security of the property therein, or is disruptive of Government operations.

§ 1203a.104 Violation of security areas.

(a) *Removal of unauthorized persons.* The directors of NASA field and component installations (or their designees) and the Director of Headquarters Administration for NASA Headquarters (including component installations) or his designee may order the removal or eviction of any person whose presence in a designated security area is in violation of the provisions of this part or any regulation or order established pursuant to the provisions of this part.

(b) *Criminal penalties for violation.* Whoever willfully violates, attempts to violate, or conspires to violate any regulation or order establishing requirements or procedures for authorized entry into an area designated restricted, limited, or closed pursuant to the provisions of this part may be subject to prosecution under 18 U.S.C. 799 which provides penalties for a fine of not more than $5,000 or imprisonment for not more than 1 year, or both.

§ 1203a.105 Implementation by field and component installations.

If a Director of a NASA field or component installation finds it necessary to issue supplemental instructions to any provision of this part, the instructions must first be published in the FEDERAL REGISTER. Therefore, the proposed supplemental instructions will be sent to the Security Division (Code DHZ), NASA Headquarters, in accordance with NASA Management Instruction 1410.10 for processing.

PART 1204—ADMINISTRATIVE AUTHORITY AND POLICY

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1204.401 Policy.
1204.402 Responsibility.
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1204.508 Delegation of authority of certain civil rights functions to Department of Health, Education, and Welfare.
1204.509 Delegation of authority to take action regarding "liquidated damage" assessments under the Contract Work Hours and Safety Standards Act, and associated labor statutes.

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APPENDIX A TO PART 1204—ITEMS TO COVER IN MEMORDANDA OF AGREEMENT

Subparts 1—3 [Reserved]

Subpart 4—Small Business Policy

AUTHORITY: Small Business Act of 1953 (15 U.S.C. 637) as amended by Pub. L. 95-507, sec. 221.

SOURCE: 47 FR 18124, Apr. 28, 1982, unless otherwise noted.

§ 1204.400 Scope of subpart.

This subpart establishes the small business policy and program of the National Aeronautics and Space Administration (NASA).

§ 1204.401 Policy.

(a) Consistent with the requirements of the Small Business Act (15 U.S.C. 631-650), as amended, and the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2473(b)(5)), it is the policy of NASA to place a fair proportion of its total purchases and contracts with small business concerns.

(b) In carrying out the NASA procurement program, the primary consideration shall be that of securing contract performance, including obtaining deliveries of required items or services at the time, in the quantity and of the quality prescribed. In the area of research and development contracts, the general policy of NASA is to award such contracts to those organizations determined by responsible personnel to have a high degree of competence in the specific branch of science or technology required for the successful conduct of the work. It is in the interest of the civilian space program that the number of firms engaged in research and development work for NASA be expanded and that there be an increase in the extent of participation in such work by competent small business firms.

§ 1204.402 Responsibility.

(a) *Office of Small and Disadvantaged Business Utilization.* The Director, Office of Small and Disadvantaged Business Utilization, NASA Headquarters, is responsible for the development, supervision and coordination of the NASA Small Business Program. The Director is also responsible for formulating policy and procedures relating to small business, and representing NASA before other government agencies on matters primarily affecting small business.

(b) *NASA field installations.* The head of each NASA field installation will designate a qualified individual in the procurement office as a "small business specialist," to provide a central point of contact to which small business concerns may direct inquiries concerning participation in the NASA procurement program, or secure assistance in submitting bids or proposals as well as performance of contracts. Where the head of a field installation considers that the volume of procurement at the installation does not warrant a full-time small business specialist, he/she may assign such duties to qualified procurement personnel on a part-time basis. NASA field installations shall establish and maintain liaison with the Small Business Administration representative or the appropriate Small Business Administration Regional Office in matters relating to field procurement activities.

§ 1204.403 General requirements.

(a) All proposed procurement transactions in excess of $2,500 shall be examined by small business specialists prior to issuance of bids or requests for proposals to determine suitability for small business participation or set-aside.

(b) The appropriate office of the Small Business Administration shall be informed of proposed procurements estimated to exceed $10,000.

(c) Bidders' list shall be maintained on a current basis and reviewed to assure that small business firms are given an equitable opportunity to participate in those procurements suitable for performance by such firms.

(d) NASA small business personnel shall acquire descriptive data, brochures, or other information concerning small business firms which appear competent to perform research and development work in fields in which NASA is interested and furnish such information to technical personnel. The Small Business Advisor at Headquarters and the small business specialists at NASA field installations shall assist and consult with NASA technical personnel in the analysis of such information, in arranging field inspection of facilities in making appointments for technical personnel with representatives of small business firms, and obtaining from other agencies appraisals of work performed by such firms.

(e) In accordance with Pub. L. 95-507, NASA will require contractors having contracts in excess of $1,000,000 for the construction of any public facility, and in excess of $500,000 for all other contracts, and of such nature as to afford opportunities for subcontracting in substantial amounts, to establish and conduct small business subcontracting programs. Such programs will be periodically reviewed by NASA small business representatives to evaluate their adequacy.

(f) NASA will encourage competent small business concerns to submit unsolicited proposals for research and development work in areas within NASA's responsibility, which may lead to contracts for such work. The formation of contractor pools or joint ventures to perform research and development work will also be encouraged.

(g) NASA small business personnel will disseminate to small business concerns information concerning inventions for which NASA holds patents on behalf of the United States and under which it is NASA policy to grant licenses.

(h) Small business participation in NASA procurement shall be accurately measured, recorded, and publicized.

Subpart 5—Delegations and Designations

AUTHORITY: 42 U.S.C. 2473.

§ 1204.500 Scope of subpart.

This subpart establishes various delegations of authority to, and designations of, National Aeronautics and Space Administration officials and other Government officials acting on behalf of the agency to carry out prescribed functions of the National Aeronautics and Space Administration.

[30 FR 3378, Mar. 13, 1965]

§ 1204.501 Delegation of authority—to take actions in real estate and related matters.

(a) *Delegation of authority.* The Associate Administrator for Management and the Director, Facilities Engineering Division, are delegated authority, in accordance with applicable laws and regulations, and subject to conditions imposed by immediate superiors, to:

(1) Prescribe agency real estate policies, procedures, and regulations;

(2) Enter into and take other actions including, but not limited to, the following;

(i) Acquire (by purchase, lease, condemnation, or otherwise) fee and lesser interests in real property and, in the case of acquisition by condemnation, to sign declarations of taking.

(ii) Use, with their consent, the facilities of Federal and other agencies with or without reimbursement.

(iii) Determine entitlement to and quantum of, financial compensation under, and otherwise exercise the authority contained in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601), and regulations in implementation thereof.

(iv) Grant easements, leaseholds, licenses, permits, or other interests (wherever located) controlled by NASA.

(v) Grant the use of NASA-controlled real property and approve the acquisition and use of nongovernment owned real property for any NASA-related, nonappropriated fund activity purpose with the concurrence of the NASA Comptroller.

(vi) Sell and otherwise dispose of real property in accordance with the provisions of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471, et seq).

(vii) Exercise control over the acquisition, utilization, and disposal of movable/relocatable structures including prefabricated buildings, commercial packaged accommodations, trailers, and other like items used as facility substitutes.

(viii) Request other government agencies to act as real estate agent for NASA.

(ix) Authorize other NASA officials to take specific implementing action with regard to any real property transaction included in the scope of authority delegated in paragraph (a)(2) of this section.

(b) *Redelegation.* (1) The authority delegated in paragraph (a)(1) of this section may not be redelegated.

(2) The authority delegated in paragraph (a)(2) of this section may be redelegated with power of further redelegation.

(c) *Reporting.* The officials to whom authority is delegated in this section shall ensure that feedback is provided to keep the Administrator fully and currently informed of significant actions, problems, or other matters of substance related to the exercise of the authority delegated hereunder.

[51 FR 26862, July 28, 1986]

§ 1204.502 [Reserved]

§ 1204.503 Delegation of authority to grant easements.

(a) *Scope.* 40 U.S.C. 319 to 319C authorizes executive agencies to grant, under certain conditions, the easements as the head of the agency determines will not be adverse to the interests of the United States and subject to the provisions as the head of the agency deems necessary to protect the interests of the United States.

(b) *Delegation of authority.* The Associate Administrator for Management and the Director, Facilities Engineering Division, are delegated authority to take actions in connection with the granting of easements.

(c) *Definitions.* The following definitions will apply:

(1) *State* means the States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States.

(2) *Person* includes any corporation, partnership, firm, association, trust, estate, or other entity.

(d) *Determination.* It is hereby determined that grants of easements made in accordance with the provisions of this section will not be adverse to the interests of the United States.

(e) *Redelegation.* (1) The Directors of Field Installations with respect to real property under their supervision and management may, subject to the restrictions in paragraph (f) of this section, exercise the authority of the National Aeronautics and Space Act of 1958, as amended, and 40 U.S.C. 319 to 319C to authorize or grant easements in, over, or upon real property of the United States controlled by NASA as will not be adverse to the interests of the United States.

(2) The Directors of Field Installations may redelegate this authority to only two senior management officials of the appropriate field installation.

(f) *Restrictions.* Except as otherwise specifically provided, no such easement shall be authorized or granted under the authority stated in paragraph (e) of this section unless:

(1) The appropriate Director of the Field Installation determines:

(i) That the interest in real property to be conveyed is not required for a NASA program.

(ii) That the grantee's exercise of rights under the easement will not interfere with NASA operations.

(2) Monetary or other benefit, including any interest in real property, is received by the government as consideration for the granting of the easement.

(3) The instrument granting the easement provides:

(i) For the termination of the easement, in whole or in part, and without cost to the government, if there has been:

(A) A failure to comply with any term or condition of the grant;

(B) A nonuse of the easement for a consecutive 2-year period for the purpose for which granted; or

(C) An abandonment of the easement; or

(D) A determination by the Associate Administrator for Management, the Director, Facilities Engineering Division, or the appropriate Director of the Field Installation that the interests of the national space program, the national defense, or the public welfare require the termination of the easement; and a 30-day notice, in writing, to the grantee that the determinatioin has been made.

(ii) That written notice of the termination shall be given to the grantee, or its successors or assigns, by the Associate Administrator for Management, the Director, Facilities Engineering Division, or the appropriate Director of the Field Installation, and that termination shall be effective as of the date of the notice.

(iii) For any other reservations, exceptions, limitations, benefits, burdens, terms, or conditions necessary to protect the interests of the United States.

(g) *Waivers.* If, in connection with a proposed granting of an easement, the Director of a Field Installation determines that a waiver from any of the restrictions in paragraph (f) of this section is appropriate, authority for the waiver may be requested from the Associate Administrator for Management or the Director, Facilities Engineering Division.

(h) *Services of the Corps of Engineers.* In exercising the authority herein granted, the Directors of Field Installations, under the applicable provisions of any cooperative agreement between NASA and the Corps of Engineers (in effect at that time), may:

(1) Utilize the services of the Corps of Engineers, U.S. Army.

(2) Delegate authority to the Corps of Engineers to execute, on behalf of NASA, grants of easements in real property, as authorized in this section, provided that the conditions set forth in paragraphs (f) and (g) of this section are complied with.

(i) *Distribution of documents.* One copy of each document granting an easement interest under this authority, including instruments executed by the Corps of Engineers, will be forwarded for filing in the Central Depository for Real Property Documents to:

National Aeronautics and Space Administration, Real Estate Management Branch (Code NXG), Facilities Engineering Division, Washington, DC 20546.

[51 FR 26860, July 28, 1986]

§ 1204.504 Delegation of authority to grant leaseholds, permits, and licenses in real property.

(a) *Delegation of authority.* The National Aeronautics and Space Act of 1958, as amended, authorizes NASA to grant leaseholds, permits, and licenses in real property. This authority is delegated to the Associate Administrator for Management and the Director, Facilities Engineering Division.

(b) *Definition. Real Property* means land, buildings, other structures and improvements, appurtenances, and fixtures located thereon.

(c) *Determination.* It is hereby determined that grants of leaseholds, permits, or licenses made in accordance with the provisions of this section will not be adverse to the interests of the United States.

(d) *Redelegation.* (1) The Directors of Field Installations with respect to real property under their supervision and management may, subject to the restrictions in paragraph (e) of this section, grant a leasehold, permit, or license to any person or organization, including other Government agencies, a State, or political subdivision or agency thereof. This authority may not be exercised with respect to real property which is (i) excess within the meaning of 40 U.S.C. 472(e), or (ii) proposed for use by a NASA exchange and subject to the provisions of NASA Management Instruction 9050.6, NASA Exchange Activities.

(2) The Directors of Field Installations may redelegate this authority to only two senior management officials of the Field Installation concerned.

(e) *Restrictions.* Except as otherwise specifically provided, no leasehold, permit, or license shall be granted under the authority stated in paragraph (d) of this section unless:

(1) The Director of the Field Installation concerned determines:

(i) That the interest to be granted is not required for a NASA program.

(ii) That the grantee's exercise of rights granted will not interfere with NASA operations.

(2) Fair value in money is received by NASA on behalf of the Government as consideration.

(3) The instrument provides:

(i) For a term not to exceed 5 years.

(ii) For the termination thereof, in whole or in part, and without cost to the Government if there has been:

(A) A failure to comply with any term or condition of the grant; or

(B) A determination by the Associate Administrator for Management, the Director, Facilities Engineering Division, or the Director of the Field Installation concerned that the interests of the national space program, the national defense, or the public welfare require the termination of the interest granted; and a 30-day notice, in writing, to the grantee that such determination has been made.

(iii) That written notice of termination shall be given to the grantee, or its successors or assigns, by the Associate Administrator for Management, the Director, Facilities Engineering Division, or the Director of the Field Installation concerned, and that termination shall be effective as of the date specified by such notice.

(iv) For any other reservations, exceptions, limitations, benefits, burdens, terms, or conditions necessary to protect the interests of the United States.

(f) *Waivers.* If, in connection with a proposed grant, the Director of a Field Installation determines that a waiver from any of the restrictions set forth in paragraph (e) of this section is appropriate, a request may be submitted to the Associate Administrator for Management or the Director, Facilities Engineering Division.

(g) *Services of the Corps of Engineers.* In exercising the authority herein granted, the Directors of Field Installations, pursuant to the applicable provisions of any cooperative agreement between NASA and the Corps of Engineers (in effect at the time), may:

(1) Utilize the services of the Corps of Engineers, U.S. Army.

(2) Delegate authority to the Corps of Engineers to execute, on behalf of NASA, any grants of interests in real property as authorized in this section provided that the conditions set forth in paragraphs (e) and (f) of this section are complied with.

(h) *Distribution of Documents.* One copy of each document granting an interest in real property, including instruments executed by the Corps of Engineers, will be forwarded for filing in the Central Depository for Real Property Documents to:

National Aeronautics and Space Administration, Real Estate Management Branch (Code NXG), Facilities Engineering Division, Washington, DC 20546.

[51 FR 27528, Aug. 1, 1986]

§ 1204.505 Delegation of authority to execute certificates of full faith and credit.

(a) *Scope.* This section designates NASA officials authorized to certify NASA documents to be submitted in evidence in Federal Courts.

(b) *Delegation of authority.* The following NASA Headquarters officials are delegated authority to execute certificates of full faith and credit (Office of the Administrator section of NASA Form 955) certifying the signatures and authority of employees of the National Aeronautics and Space Administration, whenever such certification is required to authenticate copies of official records for possible admission in evidence in judicial proceedings pursuant to 28 U.S.C. 1733 or any other statute:

(1) General Counsel;

(2) Deputy General Counsel;

(3) [Reserved]

(4) Assistant General Counsels.

[29 FR 6319, May 14, 1964, as amended at 39 FR 25229, July 9, 1974; 43 FR 34122, Aug. 3, 1978]

§§ 1204.506—1204.507 [Reserved]

§ 1204.508 Delegation of authority of certain civil rights functions to Department of Health, Education, and Welfare.

(a) Pursuant to the authority of § 1250.111(c) of this chapter, the following responsibilities of the National Aeronautics and Space Administration and of the responsible NASA official under Title VI, Civil Rights Act of 1964 (78 Stat. 252) (42 U.S.C. 2000d), with respect to institutions of higher education were delegated by the Administrator, NASA, to the Secretary, Department of Health, Education, and Welfare, on March 15, 1966:

(1) Responsibilities with respect to compliance reports, including receiving and evaluation thereof under § 1250.105(b) of this chapter, and other actions under § 1250.105 of this chapter.

(2) All actions under § 1250.106 of this chapter, including periodic compliance reviews, receiving of complaints, investigations, determination of recipient's apparent failure to comply, and resolution of matters by informal means.

(b) NASA specifically has reserved to itself the responsibilities for effectuation of compliance under §§ 1250.107, 1250.108, and 1250.109 of this chapter.

(c) The responsibilities so delegated were and are to be exercised in accordance with the "Plan for Coordinated Enforcement Procedures for Higher Education" (dated February 1966), developed by interested Government agencies and approved by the Department of Justice; and redelegation by the Secretary to other officials of the Department of Health, Education, and Welfare was authorized.

(d) NASA has retained the right to exercise these responsibilities itself in special cases with the agreement of the appropriate official in the Department of Health, Education, and Welfare. The Office of Grants and Research Contracts, NASA Headquarters, has been designated to represent NASA in carrying out the provisions of this delegation.

[32 FR 3883, Mar. 9, 1967]

§ 1204.509 Delegation of authority to take action regarding "liquidated damage" assessments under the Contract Work Hours and Safety Standards Act, and associated labor statutes.

(a) *Delegation of authority.* The Director, Industrial Relations Office, is hereby delegated the authority to act for the Administrator in all matters where the "Agency Head" is authorized to act under 29 CFR Part 5, labor standards provisions applicable to contracts covering federally financed and assisted construction and labor standards provisions applicable to nonconstruction contracts as they are subject to the Conract Work Hours and Safety Standards Act, in regards to the assessment of liquidated damages.

(b) *Redelegation.* None authorized except by virtue of succession.

(c) *Reporting.* The official to whom authority is delegated in this regulation will assure that feedback is provided to keep the Administrator informed of significant actions, problems, or other matters of substance related to the exercise of the authority delegated hereunder.

[52 FR 35538, Sept. 22, 1987]

Subparts 6—9 [Reserved]

Subpart 1204.10—Inspection of Persons and Personal Effects on NASA Property

SOURCE: 54 FR 2099, Jan. 19, 1989, unless otherwise noted.

§ 1204.1000 Scope of subpart.

This subpart establishes NASA policy and prescribes certain minimum procedures concerning the inspection of persons and property in their possession on NASA installations.

§ 1204.1001 Policy.

In the interest of national security, NASA will provide appropriate and adequate protection or security for facilities, property, and information in its possession or custody. In furtherance of this policy, NASA reserves the right to conduct an inspection of any person, including any property in the person's possession or control, as a condition of admission to or continued presence on any NASA installation.

§ 1204.1002 Responsibility.

The Director for each Field Installation and the Assistant Administrator for Headquarters Operations are responsible for implementing the provisions of this subpart when it is determined that such action is necessary because of bomb threats, unexplained loss of Government property, or other unusual situations, for the protection or security of the installation and the personnel and property therein. In the local implementation of this subpart, the Directors of NASA Installations (and component installations) located on Federal property under the control of other agencies will coordinate their action with appropriate officials of the other agencies concerned.

§ 1204.1003 Procedures.

(a) All entrances to NASA installations will be conspicuously posted with the following notices:

PURSUANT TO NASA REGULATIONS THE ENTRANCE OF INDIVIDUALS TO, OR THEIR CONTINUED PRESENCE ON, THIS INSTALLATION IS CONDITIONED UPON THEIR CONSENT TO INSPECTION OF THEIR PERSONS, AND OF PROPERTY IN THEIR POSSESSION OR CONTROL.

(b) Inspection pursuant to this subpart will be conducted only by NASA security personnel or members of the installation security patrol or guard force. Such inspections will be conducted in accordance with guidelines established by the Director, NASA Security Office, NASA Headquarters.

(c) If an individual does not consent to an inspection, it will not be carried out, and the individual will be denied admission to, or be escorted from, the installation.

(d) If, during an inspection, an individual is found to be in unauthorized possession of items believed to represent a threat to the safety or security of the installation, the individual will be denied admission to, or be escorted from, the installation and appropriate law enforcement authorities will be notified immediately.

(e) If, during an inspection conducted pursuant to this subpart, an individual is in possession of U.S. Government property without proper authorization, that person will be required to relinquish the property to the security representative conducting the inspection pending proper authorization for the possession of the property or its removal from the installation. The individual relinquishing the property will be given a receipt therefor.

Subparts 11—13 [Reserved]

Subpart 14—Use of NASA Airfield Facilities by Aircraft Not Operated for the Benefit of the Federal Government

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 50 FR 43125, Oct. 24, 1985, unless otherwise noted.

§ 1204.1400 Scope.

This subpart establishes the responsibility and sets forth the conditions and procedures for the use of NASA airfield facilities by aircraft not operated for the benefit of the Federal Government.

§ 1204.1401 Definitions.

For the purpose of this Subpart 1204.14, the following definitions apply:

(a) *NASA airfield facility.* Those aeronautical facilities owned and operated by NASA that consist of the following:

(1) *Shuttle landing facility.* The aeronautical facility which is a part of the John F. Kennedy Space Center (KSC), Kennedy Space Center, FL, and is located at 80°41′ west longitude and 28°37′ north latitude.

(2) *Wallops Airport.* The aeronautical facility which is part of the Wallops Flight Facility (WFF), Wallops Island, VA, and is located at 75°36′ west longitude and 37°56′ north latitude in the general vicinity of Chincoteague, Virginia.

(b) *Aircraft not operated for the benefit of the Federal Government.* Aircraft which are not owned by the United States Government or aircraft carrying crew members or passengers who do not have official business requiring the use of a NASA airfield facility in the particular circumstance in question.

(c) *Official business.* Business, in the interest of the U.S. Government, which personnel aboard an aircraft must transact with U.S. Government personnel or organizations at or near a NASA facility. The use of a NASA airfield facility by transient aircraft to petition for U.S. Government business or to obtain clearance, servicing, or other items pertaining to itinerant operations is not considered official business.

(d) *User.* An individual partnership, or corporation owning, operating, or using an aircraft not operated for the benefit of the Federal Government in whose name permission to use a NASA airfield facility is to be requested and granted.

(e) *Hold harmless agreement.* An agreement executed by the user by which the user acknowledges awareness of the conditions of the permission to use a NASA airfield facility, assumes any risks connected therewith, and releases the U.S. Government from all liability incurred by the use of such facility.

(f) *Use permit.* The written permission signed by the authorized approving official to land, take off, and otherwise use a NASA airfield facility. Such use permit may be issued for single or multiple occasions. The specific terms of the use permit and the provisions of this Subpart govern the use which may be made of the airport by aircraft not operated for the benefit of the Federal Government.

(g) *Certificate of insurance.* A certificate signed by an authorized insurance company representative (or a facsimile of an insurance policy) evidencing that insurance is then in force with respect to any aircraft not operated for the benefit of the Federal Government, the user of which is requesting permission to use a NASA airfield facility (see § 1204.1404(b)).

§ 1204.1402 Policy.

(a) NASA is not engaged in a public or quasi-public enterprise; and, hence, any use of airfield facilities by aircraft not operated for the benefit of the Federal Government shall be within the sole discretion of the approving authorities.

(b) Except in the event of a declared in-flight emergency (see § 1204.1406) or as otherwise determined by an approving authority, aircraft not operated for the benefit of the Federal Government are not permitted to land or otherwise use NASA airfield facilities.

(c) Any use of a NASA airfield facility by aircraft not operated for the benefit of the Federal Government shall be gratuitous and no consideration (monetary or otherwise) shall be exacted or received by NASA for such use. However, each user, as a condition of receiving permission to use such airfield facility, shall agree to become familiar with the physical condition of the airfield; abide by the conditions placed upon such use; subject the aircraft, the user, and those accompanying the user to any requirements imposed by NASA in the interest of security and safety while the aircraft or persons are on a NASA facility; use the facilities entirely at the user's own risk; hold the Federal Government harmless with respect to any and all liabilities which may arise as a result of the use of the facilities; and carry insurance in an amount which is deemed adequate by NASA.

(d) Permission to use a NASA airfield facility will be granted only in accordance with the limitations and procedures established by an approving authority and then only when such use will not compete with another airport in the vicinity which imposes landing fees or other user charges.

(e) In no event, except for an inflight emergency (see § 1204.1406), will permission to use NASA airfield facilities be granted to an aircraft arriving directly from, or destined for, any location outside the continental United States.

(f) Permission to use NASA airfields may be granted only to those users having the legal capacity to contract and whose aircraft are in full compliance with applicable Federal Aviation Administration or other cognizant regulatory agency requirements.

(g) Permission to use NASA airfields, except in connection with a declared in-flight emergency, will consist of the right to land, park an aircraft, and subsequently take off. NASA is not equipped to provide any other services such as maintenance or fuel and such services will not be provided except following an in-flight emergency.

§ 1204.1403 Available airport facilities.

The facilities available vary at each NASA installation having an airfield. The airport facilities available are:

(a) *Shuttle landing facility*—(1) *Runways.* Runway 15-33 is 15,000 feet long and 300 feet wide with 1,000-foot overruns. The runway is grooved for improved braking under wet conditions.

(2) *Parking area and hangar space.* No hangar space is available. Very limited concrete parking ramp space may be made available for short periods.

(3) *Control tower.* A temporary control tower is operational at selected times and provides VHF and UHF communications on 126.3 MHz and 284.0 MHz. Times when the tower is operational will be publicized through the Federal Aviation Administration's (FAA) Notice to Airmen (NOTAM) system. At other times an advisory service is operational during normal duty hours. FAA regulations pertaining to the operation of aircraft at airports with an operating control tower (§ 91.87 of this title) will apply. When the tower is not in operation, the FAA regulations pertaining to the operation of aircraft at airports without an operating control tower (§ 91.89 of this title) will apply.

(4) *Navigation aids.* There are no approved navigation aids. A Microwave Scanning Beam Landing System (MSBLS) and a Tactical Airborne Navigation System (TACAN) are installed at the Facility. Runway approach lighting (similar to Cat II ALSF-2) and edge lights are available by prior arrangement.

(5) *Hazards.* There are towers and buildings south and southeast of the facility that could pose hazards to air navigation. All are marked with obstruction lights.

(6) *Emergency equipment.* Crash, fire, and rescue (CFR) support will be provided for all multiengine aircraft and for all aircraft weighing over 12,500 pounds during departures and landings.

(b) *Wallops Airport*—(1) *Runways.* There are three hard surfaced runways in satisfactory condition. The runways and taxiways are concrete and/or asphalt. Runway 10-28 is 8,000 feet long, 200 feet wide with maximum wheel load of 57,500 pounds; runway 04-22 is 8,750 feet long, 150 feet wide with maximum wheel load of 57,500 pounds; and runway 17-35 is 4,820 feet long, 150 feet wide with maximum wheel load of 14,700 pounds.

(2) *Parking areas and hangar space.* No hangar space is available. However, limited concrete parking ramp space is available as directed by the control tower.

(3) *Control tower.* This control tower is normally in operation from 0800/1600 local time, Monday through Friday only, legal holidays excluded. The tower may be contracted on 126.5 MHz or 394.3 MHz. When the tower is in operation, FAA regulations pertaining to the operation of aircraft at airports with an operating tower (§ 91.87 of this title) will apply. When the tower is not in operation the FAA reg-

ulations pertaining to the operation of aircraft at airports without an operating control tower (§ 91.89 of this title) will apply.

(4) *Navigation aids.* Runway and taxiway lights on runway and taxiway 04-22 and 10-28 only. Specific request must be made of the control tower or Salisbury Flight Service Station to have these lights turned on. Lighted red obstruction lights on all airfield obstructions.

(5) *Physical hazards.* Numerous towers in airport vicinity up to 241 feet above ground level.

(6) *Emergency equipment.* Crash, fire, and rescue equipment is normally available on a continuous basis.

(c) *Other facilities.* No facilities or services other than those described above are available except on an individual emergency basis to any user.

(d) *Status of facilities.* Change to the status of the KSC and WFF facilities will be published in appropriate current aeronautical publications.

§ 1204.1404 Requests for use of NASA airfield facilities.

(a) Request for use of a NASA airfield, whether on a one time or recurring basis must be in writing and addressed to the appropriate NASA facility, namely:

(1) *Shuttle landing facility*—Director of Center Support Operations, Kennedy Space Center, FL 32899.

(2) *Wallops Airport*—Director of Suborbital Projects and Operations, Goddard Space Flight Center, Wallops Flight Facility, Wallops Island, VA 23337.

(b) Such requests will:

(1) Identify the prospective user and aircraft fully, including number of passengers and cargo on board.

(2) State the purpose of the proposed use and the reason why the use of the NASA airfield is proposed rather than a commercial airport.

(3) Indicate the number and approximate date(s) and time(s) of such proposed use.

(4) State that the prospective user is familiar with the provisions of this Subpart 1204.14 and is prepared to fully comply with its terms and the use permit which may be issued.

(c) Upon receipt of the written request for permission to use the airport, the NASA official designated by each facility will request additional information, if necessary, and forward the required Hold Harmless Agreement for execution by the requestor or forward, where appropriate, a denial of the request.

(d) The signed original of the Hold Harmless Agreement shall be returned to the designated NASA official, and a copy retained in the aircraft at all times. Such copy shall be exhibited upon proper demand by any NASA official.

(e) At the same time that the prospective user returns the executed original of the Hold Harmless Agreement, the user shall forward to the designated NASA official the required Certificate of Insurance and waiver of rights to subrogation. Such certificate shall evidence that during any period for which a permit to use is being requested, the prospective user has in force a policy of insurance covering liability to others in amounts not less than those listed in the Hold Harmless Agreement.

(f) When the documents (in form and substance) required by paragraphs (b) through (e) of this section have been received, they will be forwarded with a proposed use permit to the approving authority for action.

(g) The designated NASA official will forward the executed use permit or notification of denial thereof to the prospective user after the approving authority has acted.

§ 1204.1405 Approving authority.

The authority to establish limitations and procedures for use of a NASA airfield as well as the authority to approve or disapprove the use of the NASA airfield facilities subject to the terms and conditions of this Subpart 1204.14 and any supplemental rules or procedures established for the facility is vested in:

(a) *Shuttle landing facility.* Director of Center Support Operations, Kennedy Space Center, NASA.

(b) *Wallops Airport.* Director of Suborbital Projects and Operations, Goddard Space Flight Center, Wallops Flight Facility, NASA.

§ 1204.1406 Procedures in the event of a declared in-flight emergency.

(a) Any aircraft involved in a declared in-flight emergency that endangers the safety of its passengers and aircraft may land at a NASA airfield. In such situations, the requirements of this Subpart 1204.14 for advance authorizations, do not apply.

(b) NASA personnel may use any method or means to clear the aircraft or wreckage from the runway after a landing following an in-flight emergency. Care will be taken to preclude unnecessary damage in so doing. However, the runway will be cleared as soon as possible for appropriate use.

(c) The emergency user will be billed for all costs to the Government that result from the emergency landing. No landing fee will be charged, but the charges will include the labor, materials, parts, use of equipment, and tools required for any service rendered under these circumstances.

(d) In addition to any report required by the Federal Aviation Administration, a complete report covering the landing and the emergency will be filed with the airfield manager by the pilot or, if the pilot is not available, any other crew member or passenger.

(e) Before an aircraft which has made an emergency landing is permitted to take off (if the aircraft can and is to be flown out) the owner or operator thereof shall make arrangements acceptable to the approving authority to pay any charges assessed for services rendered and execute a Hold Harmless Agreement. The owner or operator may also be required to furnish a certificate of insurance, as provided in § 1204.1404, covering such take off.

§ 1204.1407 Procedure in the event of an unauthorized use.

Any aircraft not operated for the benefit of the Federal Government which lands at a NASA airfield facility without obtaining prior permission from the approving authority, except in a bona fide emergency, is in violation of this Subpart 1204.14. Such aircraft will experience delays while authorization for departure is obtained pursuant to this Subpart 1204.14 and may, contrary to the other provisions of this Subpart 1204.14, be required, in the discretion of the approving authority, to pay a user fee of not less than $100. Before the aircraft is permitted to depart, the approving authority will require full compliance with this Subpart 1204.14, including the filing of a complete report explaining the reasons for the unauthorized landing. When it appears that the violation of this Subpart 1204.14 was deliberate or is a repeated violation, the matter will be referred to the Aircraft Management Office, NASA Headquarters, which will then grant any departure authorization.

Subpart 15—Intergovernmental Review of National Aeronautics and Space Administration Programs and Activities

AUTHORITY: E.O. 12372, July 14, 1982, 47 FR 30959, as amended April 8, 1983, 48 FR 15887; sec. 401 of the Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506).

SOURCE: 48 FR 29340, June 24, 1983, unless otherwise noted.

EDITORIAL NOTE: For additional information, see related documents published at 47 FR 57369, December 23, 1982, 48 FR 17101, April 21, 1983, and 48 FR 29096, June 24, 1983.

§ 1204.1501 Purpose.

(a) The regulations in this part implement Executive Order 12372, "Intergovernmental Review of Federal Programs," issued July 14, 1982, and amended on April 8, 1983. These regulations also implement applicable provisions of section 401 of the Intergovernmental Cooperation Act of 1968, as amended.

(b) These regulations are intended to foster an intergovernmental partnership and a strengthened federalism by relying on state processes and on state, areawide, regional and local coordination for review of proposed direct Federal development.

(c) These regulations are intended to aid the internal management of the Agency, and are not intended to create any right or benefit enforceable at law by a party against the agency or its officers.

§ 1204.1502 Definitions.

Agency means the U.S. National Aeronautics and Space Administration.

Order means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983, and titled "Intergovernmental Review of Federal Programs."

Administrator means the Administrator of the U.S. National Aeronautics and Space Administration or an official or employee of the Agency acting for the Administrator under a delegation of authority.

State means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

§ 1204.1503 Programs and activities subject to these regulations.

The Administrator publishes in the FEDERAL REGISTER a description of the Agency's programs and activities that are subject to these regulations.

§ 1204.1504 [Reserved]

§ 1204.1505 Federal interagency coordination.

The Administrator to the extent practicable, consults with and seeks advice from all other substantially affected federal departments and agencies in an effort to assure full coordination between such agencies and the Agency regarding programs and activities covered under these regulations.

§ 1204.1506 Procedures for selecting programs and activities under these regulations.

(a) A state may select any program or activity published in the FEDERAL REGISTER in accordance with § 1204.1503 of this part for intergovernmental review under these regulations. Each state, before selecting programs and activities shall consult with local elected officials.

(b) Each state that adopts a process shall notify the Administrator of the Agency's programs and activities selected for that process.

(c) A state may notify the Administrator of changes in its selections at any time. For each change, the state shall submit to the Administrator an assurance that the state has consulted with local elected officials regarding the change. The Agency may establish deadlines by which states are required to inform the Administrator of changes in their program selections.

(d) The Administrator uses a state's process as soon as feasible, depending on individual programs and activities, after the Administrator is notified of its selections.

§ 1204.1507 Communicating with State and local officials concerning the Agency's programs and activities.

(a) For those programs and activities covered by a state process under § 1204.1506 the Administrator, to the extent permitted by law:

(1) Uses the official state process to determine views of state and local elected officials; and;

(2) Communicates with state and local elected officials, through the official state process, as early in a program planning cycle as is reasonably feasible to explain specific plans and actions.

(b) The Administrator provides notice to directly affected state, areawide, regional, and local entities in a state of proposed direct Federal development if:

(1) The state has not adopted a process under the Order; or

(2) The development involves a program or activity not selected for the state process.

This notice may be made by publication in a periodical of general circulation in the area likely to be affected or other appropriate means, which the Agency in its discretion deems appropriate.

§ 1204.1508 Time limitations for receiving comments on proposed direct Federal development.

(a) Except in unusual circumstances, the Administrator gives state processes or state, areawide, regional and local officials and entities at least 60 days from the date established by the Administrator to comment on proposed direct Federal development.

(b) This section also applies to comments in cases in which the review, coordination, and communication with the Agency has been delegated.

§ 1204.1509 Receiving and responding to comments.

(a) The Administrator follows the procedures in § 1204.1510 if:

(1) A state office or official is designated to act as a single point of contact between a state process and all federal agencies; and

(2) That office or official transmits a state process recommendation for a program selected under § 1204.1506.

(b)(1) The single point of contact is not obligated to transmit comments from state, areawide, regional or local officials and entities where there is no state process recommendation.

(2) If a state process recommendation is transmitted by a single point of contact, all comments from state, areawide, regional, and local officials and entities that differ from it must also be transmitted.

(c) If a state has not established a process, or is unable to submit a state process recommendation, state, areawide, regional and local officals and entities may submit comments to the Agency.

(d) If a program or activity is not selected for a state process, state, areawide, regional and local officials and entities may submit comments to the Agency. In addition, if a state process recommendation for a nonselected program or activity is transmitted to the Agency by the single point of contact, the Administrator follows the procedures of § 1204.1510 of this part.

(e) The Administrator considers comments which do not constitute a state process recommendation submitted under these regulations and for which the Administrator is not required to apply the procedures of § 1204.1510 of this part, when such comments are provided by a single point of contact, or directly to the Agency by a commenting party.

§ 1204.1510 Efforts to accommodate intergovernmental concerns.

(a) If a state provides a state process recommendation to the Agency through its single point of contact, the Administrator either:

(1) Accepts the recommendation;

(2) Reaches a mutally agreeable solution with the state process; or

(3) Provides the single point of contact with a written explanation of its decision, in such form as the Administrator in his or her discretion deems appropriate. The Administrator may also supplement the written explanation by providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Administrator informs the single point of contact that:

(1) The Agency will not implement its decision for a least ten days after the single point of contact receives the explanation; or

(2) The Administrator has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification five days after the date of mailing of such notification.

§ 1204.1511 Coordination in interstate situations.

(a) The Administrator is responsible for—

(1) Identifying proposed direct Federal development that has an impact on interstate areas;

(2) Notifying appropriate officials and entities in states which have adopted a process and which select the Agency's program or activity.

(3) Making efforts to identify and notify the affected state, areawide, regional, and local officials and entities in those states that have not adopted a process under the Order or do not select the Agency's program or activity;

(4) Responding pursuant to § 1204.1510 of this part if the Administrator receives a recommendation from a designated areawide agency transmitted by a single point of contact, in cases in which the review, coordination, and communication with the Agency have been delegated.

(b) The Administrator uses the procedures in § 1204.1510 if a state process provides a state process recommendation to the Agency through a single point of contact.

§ 1204.1512 [Reserved]

§ 1204.1513 Waivers of provisions of these regulations.

In an emergency, the Administrator may waive any provision of these regulations.

APPENDIX A TO PART 1204—ITEMS TO COVER IN MEMORANDA OF AGREEMENT

The items to be covered in Memoranda of Agreement between NASA Installations and state and areawide OMB Circular A-95 clearinghouses for coordinating NASA and civilian planning:

1. Clearinghouses will be contacted at the earliest practicable point in project planning. Generally, this will be during the preparation of Preliminary Engineering Reports, or possibly earlier if meaningful information is available that could practically serve as an input in the decision-making process. It should be noted that clearinghouses are generally comprehensive planning agencies. As such, they are often the best repositories of information required for development planning and constitute a resource that can often save Federal planners substantial time and effort, if consulted early enough. In addition to providing information necessary for preliminary engineering, clearinghouses can make useful inputs to the development of environmental impact statements, as well as in reviewing draft statements. Thus, consultation at the earliest stage in planning can have substantial payoffs in installation development.

2. Clearinghouses will be afforded a minimum time of 30 days in which to review and comment on a proposed project and a maximum time of 45 days in which to complete such review.

3. The minimum information to be provided to the clearinghouse will consist of project description, scope and purpose, summary technical data, maps and diagrams where relevant, and any data which would show the relationship of the proposed project or action to applicable land use plans, policies, and controls for the affected area.

4. Establish procedures for notifying clearinghouses of the actions taken on projects, such as implementation, timing, postponement, abandonment, and explaining, where appropriate, actions taken contrary to clearinghouse recommendations.

PART 1205—SPACE SCIENCE FLIGHT INVESTIGATIONS

Subpart 1205.1—Policy Concerning Data Obtained from Space Science Flight Investigations

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APPENDIX B TO PART 1205—FUNCTIONS AND OPERATION OF NATIONAL SPACE SCIENCE DATA CENTER

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Subpart 1205.1—Policy Concerning Data Obtained from Space Science Flight Investigations

§ 1205.100 Scope.

(a) This subpart continues the policy and responsibilities for reduction, analysis, reposition, preservation, and dissemination of data obtained from space science flight investigations. For glossary of terms and abbreviations, see Appendix A to this subpart.

(b) These provisions apply to all data obtained from space flight experiments processed by the Space Science Steering Committee and approved by the Associate Administrator for Space Science. The policy and procedures for the conduct of the Space Science Program and the responsibilities for the selection and support of scientific investigations and Investigators are set forth in NASA Management Instruction 7100.11 and NASA Handbook 8030.6.

§ 1205.101 Policy.

(a) In conducting space science flight experiments, NASA shall seek to:

(1) Preserve the integrity of each investigation.

(2) Encourage the participation of the best qualified scientists.

(3) Make the results of investigations generally available to the scientific community at the earliest practicable time.

(4) Document the instrument performance and probable cause of malfunctions that occur.

(b) NASA shall rely on individual scientists as Principal Investigators (PIs) to carry out a complete investigation by:

(1) Selecting, when appropriate, associates known as Co-Investigators (COIs) who have supporting roles in the investigation.

(2) Conceiving specific investigations.

(3) Developing, when appropriate, the instrumentation for the investigation.

(4) Participating actively, wherever appropriate, in the actual conduct of the investigation.

(5) Reducing and analyzing the data obtained.

(6) Publishing their findings as soon as practicable.

(7) Making their Reduced Data Records (RDRs) and Analyzed Data Records (ADRs) along with supporting documentation available on a timely basis for use by the scientific community and the news media, in accordance with a Project Data Management Plan (PDMP).

(8) Documenting any significant malfunctions which occur during the lifetime of the experiment.

(c) For certain missions, NASA shall also rely on Guest Investigators to obtain data within the capability of a given mission, which are additional to the mission's primary objectives, and to perform an analysis of the acquired data. Such projects generally maintain a data retrieval and dissemination system or provide a data analysis system for the life of the project. In such cases the PDMP should address the exchange of information with the National Space Science Data Center (NSSDC) so it can act as a switching center by referring data requesters to the appropriate contact or making requests on their behalf and handling the distribution. In addition, the eventual transfer of appropriate data to a more permanent repository prior to termination of the project shall be addressed in the PDMP.

(d) For facility-class payload missions, NASA may rely on Guest Investigators to obtain and analyze data. In connection with such missions a complete analysis activity may be provided for the Investigators; this activity may involve the creation of an institute with a significant lifetime. In such cases the PDMP should address the exchange of information with the NSSDC so it can act as a switching center by referring data requesters to the appropriate contact or making requests on their behalf and handling the distribution. In addition, the eventual transfer of appropriate data to a more permanent repository prior to termination of the mission activity or institute shall be addressed in the PDMP.

(e) A provision for the release of data obtained by the individual Investigator from the investigation shall be included in an agreement with the Investigator at the time of selection to participate. NASA shall take such action as necessary to insure that data are released as required to meet scientific, technological, and public information needs.

(f) Foreign scientists participating in cooperative space science flight investigations shall be governed by appropriate international agreements and/or memoranda of understanding.

§ 1205.102 Responsibility

(a) *OSS.* The Associate Administrator for Space Science is responsible for the issuance of implementing management instructions and guidelines consistent with the provisions of this subpart. The Assistant Associate Administrator for Space Science (Science) is responsible for the program management of the NSSDC and for insuring that any noncompliance with PDMPs will be factored into future selection considerations.

(b) *OSS Program Scientist.* (1) Each Program Scientist is responsible for establishing the data analysis policies for each mission including data sharing and collaborations on data analysis. He/she will review the PDMP to assure that data interpretation meetings will be conducted, that wide dissemination of data through presentations and publications will occur and that data and supporting information will be made available to the scientific community in accordance with the PDMP and, along with the Project Scientist, he/she will monitor the execution of the PDMP. He/she will assist NASA public affairs personnel in meeting public information needs.

(2) Each Program Scientist will insure that the letter of notification of selection stipulates that the Principal Investigator (PI), Team Leader (TL), or Guest Investigator (GI) contributes to a PDMP prior to receipt of flight data which documents the plans for data analysis, dissemination of results and for making ADRs, RDRs and supporting documentation available to the scientific community through the designated data dissemination facility. The notification letter will further stipulate that selection for further opportunities will be jeopardized by failure to meet the commitments of the PDMP. The Program Scientist is also responsible for sending information for the Space Investigations Documentation System (SIDS) to the NSSDC after letters of notification have been sent.

(c) *Office of Management Operations.* The Head, Scientific and Technical Information Branch is responsible for the issuance of instructions to the Scientific and Technical Information Facility (STIF) to provide to the NSSDC a monthly listing of newly acquired articles and documents that contain information about of results from NASA-supported space science flight experiments, especially those which can be identified through the contract, grant, or NSAS Unique Project Numbers (UPN) supplied by the NSSDC.

(d) *Field installations.* NASA field installations assigned project management responsibility for space science flight projects are responsible for:

(1) Insuring that the project plan includes a statement within the project results (or equivalent) section that the Project Scientist or Mission Scientist, the appropriate scientific personnel associated with the investigations that comprise the mission, and the NSSDC acquisition manager will develop a PDMP. This PDMP will be approved by the project manager with concurrence signatures by the Project Scientist and the Director of the NSSDC.

(2) Insuring that the contracts or written agreements negotiated between the PIs, TLs, or GIs institution and the project management center specify the responsibility of the PI, TL, or GI for data reduction, data analysis, publication of results, and, where appropriate, the preparation of selected ADRs, RDRs and necessary documentation for delivery to a data disseminating repository. The contracts or written agreements will stipulate that the contract number or, in the case of a NASA field center Investigator, that the UPN number appear in all reports or articles. Copies of all reports and preprints shall be sent to the STIF and to the NSSDC. This responsibility will be documented in a PDMP to which the Investigators, the Project Scientists, the NSSDC Acquisition Manager, and the appropriate scientific advisory groups will contribute. The PDMP will commit the Investigator, where appropriate, to supply to a specified repository the following documentation upon submission of the selected ADRs and RDRs:

(i) General information about each data set, such as:

(A) Form of data set—hard copy, magnetic tape, microfiche, microfilm, photographic film, etc.

(B) Quantity of data set—number of units of the form.

(C) External identification for each physical unit of the data set—spacecraft, experiment, Investigator's internal ID.

(D) Time period covered by the data set.

(E) Quantity by which data set is ordered—time, orbit number, spatial coordinate, etc.

(F) Supporting documentation—tape formats, catalog, directory, indexes, User's Guide, etc.

(C) Brief description of the data set (not to exceed 250 words).

(ii) Specific information about each data set, such as:

(A) Magnetic tape—track density, recording density, recording mode, recording parity, make and model number of computer used, number of files, size of physical records, logical record format with specification of each field, etc.

(B) Photographic or microform—type of film, frame and/or reel numbers where supporting data and description are located, index of frames and each reel, assurance that all reels are quality controlled to allow proper duplication, etc.

(C) Hard copy—assurance that copy is clean, legible and of proper contrast so it can be photographed; index or catalog if appropriate; form of binding (burst, unburst, loose leaf, bound); etc.

(iii) A Data Users' Guide which includes a summary of the investigation, a description of the instrument, a discussion of calibration procedures and results, a discussion of pertinent events in the operational history that might affect data interpretation, a discussion of over-all data reduction procedures used in generating the various data sets, and other information useful to a scientifically trained recipient of the data.

(iv) A list of all published articles related to the investigation by the investigator group or team and copies of all reports and preprints.

(3) Insuring that Investigators on these projects fulfill the stipulations of the contracts or written agreements pertaining to the responsibilities described in paragraph (d)(1) of this section.

(4) Delivery of EDRs to Investigators on a timely basis. Conditions for discarding or destroying EDRs shall be specified in the PDMP.

(5) Providing to the NSSDC during the writing of the project plan (and provided updates during revisions and specifically after launch) the following information:

(i) Brief statement of the mission objectives for each launch (not to exceed 200 words).

(ii) The names, addresses and telephone and telex numbers of the program manager, Program Scientist, project manager, and Project Scientists for each mission.

(iii) The launch site, launch vehicle, spacecraft weight, and planned orbit parameters.

(iv) A brief description of the spacecraft, not exceeding 250 words.

(v) For each investigation the names, addresses and telephone and telex number of all the Investigators and the relevant contract or UPN numbers.

(vi) The name of each experiment, its weight, average power, and approximate bit rate.

(vii) A brief description of each experiment, not exceeding 250 words.

(e) *The PI, TL, or GI (NASA, Non-NASA, and foreign).* At the time an investigation is selected, the PI, TL, or GI will be notified by letter signed by the Associate Administrator for Space Science of his responsibilities for data reduction, prime analysis, and the archiving of appropriate ADRs and RDRs. These responsibilities (subject in the case of foreign scientists to the specifications of the governing international agreement) will include:

(1) Completion of data reduction and prime analysis of the data from his experiment within the period of time agreed upon between the PI, TL, or GI and the Associate Administrator for Space Science.

(2) Publication of the results of his analyses as soon as practicable.

(3) Preparation of selected ADRs and RDRs together with the necessary background information to make them usable by other scientists as specified in the PDMP.

(f) *National Space Science Data Center (NSSDC).* The Director, Goddard Space Flight Center (GSFC), is responsible for management of the NSSDC, the central data disseminating repository for data obtained from space science flight investigations. For functions and operation of the NSSDC, see Appendix B. The NSSDC Director, appointed by the Director, GSFC, is responsible for:

(1) Implementing the NASA project plan for the operation of the NSSDC.

(2) Recommending through the Director, GSFC, any changes in policies, procedures, and plans for the oper-

ation of the NSSDC deemed appropriate to the effective attainment of project objectives.

(3) Preparing budget estimates for operation of the NSSDC.

(4) Recommending fees for the computer and reproduction services performed by the Center to Director, Financial Management Divisions, NASA Headquarters, and obtaining from that office a fee schedule which is consistent with NASA practice.

(5) Based upon information contained in the PDMPs, compiling schedules for transmission of ADRs and RDRs to the NSSDC by investigators on NASA space science flight projects.

(6) Assigning an NSSDC acquisition manager to each flight project to participate in the development of the PDMP and to assure that the plan is carried out on an established schedule concerning the deposition of any data and documentation in the NSSDC.

(7) Providing to the STIF a monthly listing of contract, grant, or UPN numbers for all NASA funded space science flight experiments and related investigations.

(8) Preparing guidelines for the submission to the NSSDC of ADRs and RDRs with documentation from non-NASA missions, and disseminating these guidelines to appropriate individuals and agencies to serve in lieu of a formal PDMP.

(9) Reporting through the Director, GSFC, to the Assistant Associate Administrator for Space Science (Science) semiannually on the data acquisition, request activities and financial status of the NSSDC operations.

(10) Assessing adequacy of the NSSDC facilities and the effectiveness of their utilization; and recommending through the Director, GSFC, the necessary actions to meet future facility requirements.

(11) Maintaining, protecting, and retiring NASA records in the custody of the NSSDC in accordance with the policies and practices of the NASA Records Management Program, NASA Records Disposition Handbook (NASA Handbook 1441.1A) and other pertinent management instructions.

§ 1205.103 Support of research.

The NSSDC will support investigations in space sciences by making available its scientific data and facilities. However, the NSSDC will not provide financial support for such research. The Office of Space Science will entertain proposals for space science research based on data available in the NSSDC.

APPENDIX A TO PART 1205—GLOSSARY OF TERMS AND ABBREVIATIONS

Analyzed Data Records (ADRs). Those records which the Investigator designates as the best to display the scientific results of an experiment and provide the physical quantities by applying calibration curves or algorithms to the corrected observed quantities of the Reduced Data Records. The data may be time averaged and may incorporate model-dependent assumptions to obtain the physical quantities. Charts, graphs, tables, correlation coefficients, model parameters, photographs, and plots are possible forms of these records.

Co-Investigator (Co-I). An associate of the Principal Investigator (PI) who is assigned a supporting role in the investigation. In addition, some data rights may be assigned to the Co-I by the PI.

Experiment. A term used interchangeably with investigation (the latter is preferred). Activity or effort aimed at the generation of data obtained by measurement of space phenomena or the use of space to observe earth phenomena and the resulting analysis of such data.

Experiment Data Records (EDRs). Those records provided to the Principal Investigator, Team Leader, Guest Investigator, Co-Investigator, or team member containing all the data from the mission required to carry out the investigation specified in the contract or launch agreement. These records may include orbital position, spacecraft attitude, instrument attitude, commands, housekeeping data, ground time, spacecraft time, data from other investigations and other information as agreed upon. The exact form of these records and manner in which these data are provided may vary depending upon the policies, procedures, and capabilities of the project, the payload or mission control centers, the data acquisition network, and any support processing facilities. These records shall be specified in the Project Data Management Plan.

Facility-Class Payload Mission. A mission in which the payload is an instrument or set of instruments which serve as a facility for a large group of Guest Investigators who may be selected at different times throughout the life of the mission to participate. This type of mission may not have Principal Investigators or Team Leaders and all the data collected from such a mission is generally maintained by the project for use by Guest Investigators. Availability of data for the scientific community at large shall be specified at the Project Data Management Plan.

Guest Investigator (GI). Investigator selected to conduct observations and obtain data within the capability of a NASA mission, which are additional to the mission's primary objectives, or for a facility-class payload mission.

Investigation. Activity or effort aimed at the generation of data obtained by measurement of space phenomena or the use of space to observe earth phenomena and the resulting analysis of such data.

Investigator. A participant in an investigation. This term may refer to a Principal Investigator, Co-Investigator, Team Leader, team member, Guest Investigator, or any other member of an investigation group.

Mission. One or more flights within an approved payload project.

Mission Scientist. A scientist from a NASA field center assigned to a Spacelab mission, the Mission Scientist has similar functions as the Project Scientist with the exception of direct responsibility for the development of any experiments.

National Space Science Data Center (NSSDC). The main central repository for selected data and documentation from space science flight missions that serves as a disseminator of this archived data and supporting information to users throughout the international scientific community. The NSSDC, located at Goddard Space Flight Center, serves as a switching center for requesters who desire data still held individually by Principal Investigators (PIs) or Team Leaders (TLs) by providing a description of the spacecraft and experiment and the name, address and telephone number of the PI or TL. For missions involving a Guest Investigator program in association with a PI or TL experiment or involving a facility-class payload the role of the NSSDC shall be specified in the Project Data Management Plan.

Principal Investigator (PI). A person who conceives an investigation and is responsible for carrying it out, reporting its results, and providing appropriately selected data and supporting documentation to the scientific community in accordance with the Project Data Management Plan. The PI chooses his Co-Investigators and assigns them roles and privileges. The PI is the primary point of contact with the project office regarding the investigation.

Program Scientist. A NASA Headquarters official assigned to each mission who has a number of roles and responsibilities defined in NASA Management Instruction 7100.11, Attachment D. The most relevant one for this subpart is the responsibility to establish the data analysis, data dissemination, and data archiving policies for the mission, which will be documented in the Project Data Management Plan.

Project Data Management Plan (PDMP). A plan that addresses the total activity associated with the data acquired by a mission from the delivery of the Experiment Data Records to the Investigators to the delivery of selected reduced and analyzed records along with supporting documentation to a specified repository. The plan should provide the milestones in the data reduction, data interpretation, and resource requirements for these phases. Any planned data interpretation meetings, workshops, or other activities should be identified. The type of data records, data products, and compilations that have been selected in concert by the Investigators, the Project Scientist, the Program Scientist, the NSSDC acquisition manager, and any appropriate scientific advisory personnel for general availability to the international scientific community and for delivery to a disseminating repository, such as the NSSDC, shall be specified. For missions where the data will be maintained for many years by the project, the Principal Investigator handling a Guest Investigator program, or by an institute established by the mission, the eventual transfer of appropriate data to a more permanent archive, such as NSSDC or other repository, shall be specified. Conditions for discarding or destroying the Experiment Data Records shall be specified.

Project Scientist. A scientist from a NASA field center assigned to a project to manage the scientific aspects. The roles and responsibilities of this function are given in NASA Management Instruction 7100.11, Attachment E.

Reduced Data Records (RDRs). Those records prepared from the Experiment Data Records by applying corrections, where applicable, for temperature, voltage, gain change, offsets, dead time, drift and other known instrument changes, as well as eliminating unusable noisy periods and periods of questionable instrument performance. The Reduced Data Record should contain all the basic and supporting measurements obtained from the experiment, such as time position, attitude, settings of instrument by command, housekeeping data, and other information needed to analyze the data in an independent fashion. Visual data, such as photographs derived from imaging processing techniques, may also be considered as RDRs.

Scientific and Technical Information Facility (STIF). NASA's document and report acquisition and abstracting facility that produces a biweekly abstract journal, STAR, covering the aerospace report literature and a biweekly abstract journal, IAA, covering the published literature in these fields. The facility also produces microfiche copies of the report literature for primary distribution.

Space Science Flight Investigations. Investigations of natural phenomena of the earth and its environment, the moon, other planets, the sun, interplanetary space, and other celestial objects and regions made from aircraft, balloons, sounding rockets, satellites, probes, and manned spacecraft for the purpose of increasing basic knowledge of these natural phenomena. Biological investigations involving the search for extraterrestrial life are included.

APPENDIX B TO PART 1205—FUNCTIONS AND OPERATION OF NATIONAL SPACE SCIENCE DATA CENTER

The National Space Science Data Center (NSSDC) has been established at the Goddard Space Flight Center to provide scientific data and facilities in support of investigations in space science.

(a) *Data to be acquired.* The NSSDC will acquire or accept:

(1) RDRs and ADRs from NASA-sponsored space science flight experiments which are deemed appropriate for secondary distribution and archiving by PDMPs or directly by the Program Scientist. The vast majority of records will be from satellite borne instruments. Any departures from a PDMP shall be approved in writing by the Program Scientist, the Project Manager, and the NSSDC Director.

(2) Unclassifed ADRs and RDRs made available from space science flight experiments by other agencies in accordance with interagency agreements providing the data media meet standards for reproduction and the supporting documentation is adequate.

(3) Ground-based correlative data, only when it is considered absolutely necessary for the utilization of data in the NSSDC.

(4) ARDs and RDRs from foreign space science flight experiments made availble by international exchange of data through the World Data Centers or by cooperative agreements.

(b) *Data not to be acquired.* (1) Data obtained from operational observations made for specific applications such as weather forecasting, navigation, communication, tracking and telemetry, medical investigations, and technological investigations which contribute only to the development of space flight hardware will not be acquired by the NSSDC.

(2) Any data from space science flight experiments that is excluded from archiving in the NSSDC by a PDMP.

(3) EDRs (including magnetic tapes, telemetry records, exposed film and meteorite collection panels) will not be acquired by the Center.

(c) *Availability of data.* Data records in the NSSDC will be available to users on the following basis:

(1) To U.S. residents and organizations upon request.

(2) To foreign nationals in accordance with procedures of World Data Center A.

(3) To foreign nationals on the basis of cooperative agreements between NASA and the space agencies of foreign governments or multi-lateral organizations devoted to space research.

(4) To foreign governments on the basis of bilateral intergovernment agreements made by the U.S. on behalf of NASA.

(d) *Preservation of data.* This should be specifically addressed in the PDMP. In general, data in the NSSDC will be preserved for the longest practicable time consistent with the physical life of the record. Records will be reproduced to extend their storage life only if the record of their past utilization justifies such prolongation. Specific categories of data may be reproduced to extend their storage life regardless of past usage in accordance with international or interagency agreements or with the PDMP.

(e) *Interface with other sources of data from NASA missions.* Certain NASA missions such as those involving national facility payloads or those with Guest Investigator programs may maintain the data within the project for many years. The NSSDC will route requesters of such data to the appropriate facility or make request on their behalf depending on the agreement specified in the PDMP. The distribution of catalogs produced by such a mission shall also be determined by the PDMP.

(f) *NSSDC publications.* The NSSDC will issue or provide publications as necessary to facilitate the use of available data. Publications will include:

(1) *Data users guides.* Provides the data user the experiment information and describes the reduced data available. These will usually be written by the Investigators and supplied to the NSSDC as specified in the PDMP;

(2) *Catalogs of data.* Lists of all data from space science flight experiments available from the NSSDC, issued as needed. The forms in which the data are available will also be indicated; i.e., microfilm, tapes, printouts, etc. Catalogs of data available from projects that maintain their own data base, such as Guest Investigator or facility missions, will also be distributed if the PDMP so specifies.

(3) *Data Announcements.* Announces those data sets which are known to have wide appeal when such sets become available.

(g) *Other services.* The NSSDC will provide technical assistance to data users. In some cases, this may involve the conversion of data records into compatible formats to facilitate correlation of data from various sources. When facilities are available the NSSDC will provide lecture rooms, study rooms, and office space for use by visiting scientists for research involving the use of available data.

(h) *User charges.* (1) User charges will, as a matter of policy, be in accordance with the policies set forth in the Bureau of the Budget Circular A-25 and NASA Financial Management Manual 9080. The methods to be used in computing the user charges will be reviewed by the Director, Financial Management Division, NASA Headquarters.

(2) Appropriate fees will be charged for reproduction, computer and dissemination services provided to individual users by the Data Center. The NSSDC may perform conversion of data records and general technical assistance without charge to individual users. Fees for reproduction and dissemination services may be waived by the NSSDC Director if:

(i) The cost of collecting the fee would be an unduly large proportion of the amount of the fee.

(ii) The data furnished are required to accomplish a research task approved by NASA Headquarters or field installations.

(iii) The data are to be used by a Federal, State, or local government agency or by nonprofit organization.

PART 1206—AVAILABILITY OF AGENCY RECORDS TO MEMBERS OF THE PUBLIC

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AUTHORITY: Sec. 203, National Aeronautics and Space Act of 1958, as amended, 72 Stat. 429, 42 U.S.C. 2473 and 5 U.S.C. 552 as amended by Pub. L. 93-504, 88 Stat. 1561, Pub. L. 99-570, unless otherwise noted; the Privacy Act of 1974, 5 U.S.C. 552a.

SOURCE: 52 FR 41407, Oct. 28, 1987, unless otherwise noted.

Subpart 1—Basic Policy

§ 1206.100 Scope of part.

This Part 1206 establishes the policies, responsibilities, and procedures for the release to members of the public of agency records which are under the jurisdiction of the National Aeronautics and Space Administration. This part applies to information and agency records located at NASA Headquarters, at NASA Field Installations, and at NASA component installations, as defined in Part 1201 of this chapter.

§ 1206.101 Definitions.

For the purposes of this part, the following definitions shall apply:

(a) The term *agency records* or *records* includes all books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received by NASA in pursuance of Federal law or in connection with the transaction of public business and preserved by NASA as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities or because of the informational value of data contained therein. It does not include tangible objects or articles, such as structures, furniture, paintings, sculptures, exhibits, models, vehicles or equipment; library or museum material made or acquired and preserved solely for reference or exhibition purposes; or records of another agency, a copy of which may be in NASA's possession.

(b) The term *initial determination* means a decision by a NASA official, in response to a request by a member of the public for an agency record, on whether the record described in the request can be identified and located after a reasonable search and, if so, whether the record (or portions thereof) will be made available under this part or will be withheld from disclosure under Subpart 3 of this part.

(c) The term *appeal* means a request by a member of the public to the Administrator or designee, or, in the case of records as specified in § 1206.504, to the Inspector General or designee for reversal of any adverse initial determination the requester has received in response to a request for an agency record.

(d) The term *final determination* means a decision by the Administrator or designee, or, in the case of records as specified in § 1206.504, by the Inspector General or designee on an appeal.

(e) The term *working days* means all days except Saturdays, Sundays and legal public holidays.

(f) As used in § 1206.608, the term *unusual circumstances* means, but only to the extent reasonably necessary to the proper processing of a particular request for agency records—

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the NASA Information Center processing the request (see Subpart 6 of this part for procedures for processing a request for agency records);

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of NASA having substantial subject-matter interest therein.

(g) A *statute specifically providing for setting the level of fees for particular types of records* (5 U.S.C. 552(a)(4)(A)(vi)) means any statute that specifically requires a government agency to set the level of fees for particular types of records in order to:

(1) Serve both the general public and private sector organizations by

conveniently making available government information;

(2) Ensure that groups and individuals pay the cost of publications and other services which are for their special use so that these costs are not borne by the general taxpaying public;

(3) Operate an information dissemination activity on a self-sustaining basis to the maximum extent possible; or

(4) Return revenue to the Treasury for defraying, wholly or in part, appropriated funds used to pay the cost of disseminating government information.

(h) The term *direct costs* means those expenditures which NASA actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to an FOIA request. Direct costs include, for example, the salary of the employee who would ordinarily perform the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space and heating or lighting the facility in which the records are stored.

(i) The term *search* includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. NASA will ensure that searching for material is done in the most efficient, least expensive manner so as to minimize costs for both the agency and the requester and will only utilize line-by-line, page-by-page search when consistent with this policy. *Search* should be distinguished, however, from *review* of material in order to determine whether the material is exempt from disclosure (see paragraph (k) of this section). Searches may be done manually or by computer using existing programming.

(j) The term *duplication* refers to the process of making a copy of a document in order to respond to an FOIA request. Such copies can take the form of paper copy, microfilm, audio-visual materials, or machine-readable documentation (e.g., magnetic tape or disk), among others.

(k) The term *review* refers to the process of examining documents located in response to a commercial use request (see paragraph (l) of this section) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(l) The term *commercial use request* refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade or profit interests of the request or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, NASA will look first to the use to which a requester will put the documents requested. Where NASA has reasonable cause to doubt the use to which a requester will put the records sought or where that use is not clear from the request itself, NASA will seek additional clarification before assigning the request to a specific category. A request from a corporation (not a *news media* corporation) may be presumed to be for commercial use unless the requester demonstrates that it qualifies for a different fee category.

(m) The term *educational institution* refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(n) The term *non-commercial scientific institution* refers to an institution that is not operated on a *commercial* basis as that term is referenced in paragraph (l) of this section, and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(o) The term *representative of the news media* refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term *news* means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of *news*) who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of *freelance* journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but agencies may also look to the past publication record of a requester in making this determination.

(p) The term *commercial information* means, for the purpose of applying the notice requirements of § 1206.610, information provided by a submitter and in the possession of the National Aeronautics and Space Administration, that may arguably be exempt from disclosure under the provisions of Exemption 4 of the Freedom of Information Act (5 U.S.C. 552(b)(4)). The meaning ascribed to this term for the purpose of this notice requirement is separate and should not be confused with use of this or similar terms in determining whether information satisfies one of the elements of Exemption 4.

(q) The term *submitter* means a person or entity that is the source of commercial information in the possession of the National Aeronautics and Space Administration. The term *submitter* includes but is not limited to, corporations, state governments, and foreign governments. It does not include other federal government agencies or departments.

[52 FR 41407, Oct. 28, 1987, as amended at 54 FR 13518, Apr. 4, 1989]

§ 1206.102 General policy.

(a) In accordance with section 203(a)(3) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473(a)(3)), it has been and continues to be NASA policy to provide for the "widest practicable and appropriate dissemination of information concerning its activities and the results thereof."

(b) In compliance with the "Freedom of Information" amendments to the Administrative Procedure Act (5 U.S.C. 552, as amended by Public Laws 90-23, 93-502 and 99-570), a positive and continuing obligation exists for NASA to make available upon request by members of the public to the fullest extent practicable, all agency records under its jurisdiction, as described in Subpart 2 of this part, except to the extent that they may be exempt from disclosure under Subpart 3 of this part.

Subpart 2—Records Available

§ 1206.200 Types of records to be made available.

(a) Records required to be published in the FEDERAL REGISTER. The following records are required to be published in the FEDERAL REGISTER, for codification in Title 14, Chapter V, of the CFR.

(1) Description of NASA Headquarters and field organization and the established places at which, the employees from whom, and the methods whereby, the public may secure information, make submittals or requests, or obtain decisions;

(2) Statements of the general course and method by which NASA's functions are channeled and determined, including the nature, and requirements of all formal and informal procedures available;

(3) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(4) Substantive rules of general applicability adopted as authorized by

law, and statements of general policy or interpretations of general applicability formulated and adopted by NASA;

(5) Each amendment, revision, or repeal of the foregoing.

(b) *Agency opinions, orders, statements, and manuals.* (1) Unless they are exempt from disclosure under Subpart 3 of this part, or unless they are promptly published and copies offered for sale, NASA shall make available the following records for public inspection and copying or purchase:

(i) All final opinions (including concurring and dissenting opinions) and all orders made in the adjudication of cases, such as opinions of the NASA Board of Contract Appeals;

(ii) Those statements of NASA policy and interpretations which have been adopted by NASA and are not published in the FEDERAL REGISTER;

(iii) Administrative staff manuals (or similar issuances) and instructions to staff that affect a member of the public.

(2) In connection with all records required to be made available or published under this paragraph (b), identifying details shall be deleted to the extent required to prevent a clearly unwarranted invasion of personal privacy. However, in each case the justification for the deletion shall be explained fully in writing. A copy of such justification shall be attached to the front of the portion of the record made available to the requester.

(3) In connection with all records required to be made available or published under this paragraph (b) which are issued, adopted, or promulgated after July 4, 1967, except to the extent they are exempt from disclosure under Subpart 3 of this part, current indexes providing identifying information will be maintained and made available for public inspection and copying or purchase (see § 1206.402).

(c) *Other agency records.* In addition to the records made available or published under paragraphs (a) and (b) of this section, NASA shall, upon request for other records made in accordance with this part, make such records promptly available to any person, unless they are exempt from disclosure under Subpart 3 of this part, or unless they may be purchased from other readily available sources, as provided in § 1206.201.

§ 1206.201 Records which have been published.

Publication in the FEDERAL REGISTER is a means of making certain agency records available to the public. Also, the Commerce Business Daily, Synopsis of U.S. Government Proposed Procurement, Sales and Contract Awards (Department of Commerce) is a source of information concerning agency records or actions. Various other NASA publications and documents, and indexes thereto, are available from other sources, such as the U.S. Superintendent of Documents, the National Technical Information Service (Department of Commerce), and the Earth Resources Observation Systems (EROS) Data Center (Department of the Interior). Such publications and documents are not required to be made available or reproduced in response to a request therefor unless they cannot be purchased readily from available sources. If a publication or document is readily available from a source other than NASA, the requester shall be informed of the procedures to follow to obtain the publication or document.

§ 1206.202 Deletion of segregable portions of a record.

If a record requested by a member of the public contains both information required to be made available and that which is exempt from disclosure under Subpart 3 of this part, and the portion of the records that is required to be made available is reasonably segregable from the portion that is exempt, the portion that is exempt from disclosure shall be deleted and the balance of the record shall be made available to the requester. If the non-exempt portion of the record appears to be unintelligible or uninformative, the requester shall be informed of that fact, and such non-exempt portion shall not be sent to the requester unless he thereafter specifically requests it.

§ 1206.203 Creation of records.

Records will not be created by compiling selected items from the files at the request of a member of the public, nor will records be created to provide the requester with such data as ratios, proportions, percentages, frequency distributions, trends, correlations, or comparisons

§ 1206.204 Records of interest to other agencies.

If a NASA record is requested and another agency has a substantial interest in the record, such an agency shall be consulted on whether the record shall be made available under this part (see § 1206.101(f)(3)). If a record is requested that is a record of another agency, the request shall be returned to the requester, as provided in § 1206.604(c).

§ 1206.205 Incorporation by reference.

Matter which is reasonably available to the members of the public affected thereby shall be deemed published in the FEDERAL REGISTER when incorporated by reference in material published in the FEDERAL REGISTER (pursuant to the FEDERAL REGISTER regulation on incorporation by reference, 1 CFR Part 51).

§ 1206.206 Availability for copying.

Except as provided in § 1206.201, the availability of a record for inspection shall include the opportunity to extract information therefrom or to purchase copies.

§ 1206.207 Copies.

The furnishing of a single copy of the requested record will constitute compliance with this part.

§ 1206.208 Release of exempt records.

If a record which has been requested is exempt from disclosure under Subpart 3 of this part, the record may nevertheless be made available under the procedures of Subpart 6 of this part if it is determined by an official authorized to make either an initial determination or a final determination that such action would not be inconsistent with a purpose of the exemptions set forth in Subpart 3 of this part.

Subpart 3—Exemptions

§ 1206.300 Exemptions.

(a) Under 5 U.S.C. 552(b) agency records falling within the exemptions of paragraph (b) of this section are not required to be made available under this part. Such records may nevertheless be made available if it is determined that such actions would not be inconsistent with a purpose of the exemption (see § 1206.208).

(b) The requirements of this part to make agency records available do not apply to matters that are—

(1)(i) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (ii) are in fact properly classified pursuant to such Executive order;

(2) Related solely to the internal personnel rules and practices of NASA;

(3) Specifically exempted from disclosure by statute (other than 5 U.S.C. 552), provided that such statute (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Interagency or intraagency memorandums or letters which would not be available by law to a party other than an agency in litigation with NASA;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information—

(i) Could reasonably be expected to interfere with enforcement proceedings,

(A) Whenever a request is made which involves access to these records and—

(*1*) The investigation or proceeding involves a possible violation of criminal law; and

(*2*) There is reason to believe that the subject of the investigation or proceeding is not aware of its pendency, and disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication,

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy,

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source,

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

[52 FR 41407, Oct. 28, 1982; 53 FR 5765, Feb. 26, 1988]

§ 1206.301 Limitation of exemptions.

(a) This Part 1206 does not authorize the withholding of information or the availability of records to the public, except as specifically stated in this part.

(b) Nothing in this part shall be construed as authority to withhold information from Congress.

Subpart 4—Location for Inspection and Request of Agency Records

§ 1206.400 Information centers.

NASA will maintain Information Centers as set forth in this subpart.

§ 1206.401 Location of NASA information centers.

NASA will maintain the following Information Centers, at which agency records may be inspected, from which copies of agency records may be requested and at which copies of agency forms may be obtained:

(a) NASA Headquarters Information Center, National Aeronautics and Space Administration, Washington, DC 20546.

(b) NASA Information Center, Ames Research Center, Moffett Field, CA 94035.

(c) NASA Information Center, Hugh L. Dryden Flight Research Facility, Post Office Box 273, Edwards, CA 93523.

(d) NASA Information Center, Goddard Space Flight Center, Greenbelt, MD 20771.

(e) NASA Information Center, John F. Kennedy Space Center, Kennedy Space Center, FL 32899.

(f) NASA Information Center, Langley Research Center, Langley Station, Hampton, VA 23665.

(g) NASA Information Center, Lewis Research Center, 21000 Brookpark Road, Cleveland, OH 44135.

(h) NASA Information Center, Lyndon B. Johnson Space Center, Houston, TX 77058.

(i) NASA Information Center, George C. Marshall Space Flight Center, Huntsville, AL 35812.

(j) NASA Information Center, John C. Stennis Space Center, MS 39529.

(k) NASA Information Center, NASA Resident Procurement Office (JPL), 4800 Oak Grove Drive, Pasadena, CA 91109.

(l) NASA Information Center, Wallops Flight Facility, Wallops Island VA 23337.

[52 FR 41407, Oct. 28, 1987; 53 FR 2738, Feb. 1, 1988, as amended at 54 FR 49750, Dec. 1, 1989]

§ 1206.402 Documents available for inspection at NASA information centers.

(a) Each NASA Information Center will have available for inspection, as a minimum, a current version of the following documents:

(1) The Freedom of Information Act (5 U.S.C. 552, as amended by Pub. L 90-23 and Pub L. 93-502);

(2) Title 14, Chapter V, and Title 41, Chapter 18, Code of Federal Regulations, and material published in the Federal Register for codification but not yet included in the Code of Federal Regulations;

(3) A master list and index of NASA Issuances, and a copy of all such issuances;

(4) A list and index of the management issuances of the NASA installation at which the Information Center is located, and a copy of such issuances;

(5) NASA's Scientific and Technical Aerospace Reports (STAR) and current indexes thereto;

(6) Cumulative Index to Selected Speeches and News Releases issued by NASA Headquarters;

(7) Index/Digest of Decisions, NASA Board of Contract Appeals;

(8) Decisions of the NASA Contract Adjustment Board and a current index thereto;

(9) NASA Handbook NHB 5500.1A containing an index to decisions of the NASA Inventions and Contributions Board on Petitions for Patent Waivers;

(10) Copies of Environmental Impact Statements filed by NASA under the National Environmental Policy Act of 1969;

(11) Collection of all issues of "NASA Activities"; and

(12) List of licenses granted under NASA-owned patents.

(b) Because the indexes listed in paragraph (a) of this section are voluminous and because current versions thereof will be available for inspection at NASA Information Centers, from which copies of the indexes may be requested under § 1206.603, it is determined and so ordered that publication of the indexes quarterly in the Federal Register would be unnecessary and impractical.

§ 1206.403 Duty hours.

The NASA Information Centers listed in § 1206.401 shall be open to the public during all regular workdays, from 9 a.m. to 4 p.m.

Subpart 5—Responsibilities

§ 1206.500 Assistant Deputy Administrator.

Except as otherwise provided in § 1206.504, the Assistant Deputy Administrator or designee is responsible for the following:

(a) Providing overall supervision and coordination of the implementation of the policies and procedures set forth in this Part 1206;

(b) After consultation with the General Counsel, making final determinations under § 1206.607, within the time limits specified in Subpart 6 of this part;

(c) Determining whether unusual circumstances exist under § 1206.608 as would justify the extension of the time limit for a final determination.

[52 FR 41407, Oct. 28, 1987; 53 FR 2738, Feb. 1, 1988, as amended at 54 FR 49750, Dec. 1, 1989]

§ 1206.501 General Counsel.

The General Counsel is responsible for the interpretation of 5 U.S.C. 552 and of this part, and for the handling of litigation in connection with a request for an agency record under this part.

§ 1206.502 Field and component installations.

(a) Except as otherwise provided in § 1206.504, the Director of each NASA Installation or the Official-in-Charge of each Component Installation is responsible for the following:

(1) After consultation with the Chief Counsel or the Counsel charged with providing legal advice to a Field or a Component Installation, making initial determinations under § 1206.603 and § 1206.604;

(2) Determining whether unusual circumstances exist under § 1206.608 as would justify the extension of the time limit for an initial determination; and

(3) In coordination with the Assistant Deputy Administrator, ensuring that requests for records under the cognizance of his/her respective installation are processed and initial determinations made within the time limits specified in subpart 6 of this part.

(b) If so designated by the Director or Official-in-Charge of the respective installation, the principal Public Affairs Officer at the installation may perform the functions set forth in paragraphs (a) (1) and (2) of this section.

[52 FR 41407, Oct. 28, 1987, as amended at 54 FR 49750, Dec. 1, 1989]

§ 1206.503 NASA Headquarters.

(a) Except as otherwise provided in § 1206.504, the Associate Administrator for Communications, is responsible for the following:

(1) Preparing the annual reports required by § 1206.900, including establishing reporting procedures throughout NASA to facilitate the preparation of such reports;

(2) After consultation with the Office of General Counsels, making initial determinations under § 1206.603 and § 1206.604;

(3) Determining whether unusual circumstances exist under § 1206.608 as would justify the extension of the time limit for an initial determination; and

(4) In coordination with the Assistant Deputy Administrator, ensuring that requests for agency records under the cognizance of Headquarters are processed and initial determinations made within the time limits specified in subpart 6 of this part.

(b) The functions set forth in paragraphs (a) (1), (2) and (3) of this section may be delegated by the Associate Administrator for Communications to a Public Affairs Officer or Specialist and to the Manager of his/her designee, NASA Resident Procurement Office—JPL.

[52 FR 41407, Oct. 28, 1987; 53 FR 2738, Feb. 1, 1988, as amended at 54 FR 49750, Dec. 1, 1989]

§ 1206.504 Inspector General.

(a) The Inspector General or designee is responsible for making final determinations under § 1206.607 within the time limits specified in Subpart 6 of this part, with respect to audit and investigative documents originating in the Office of the Inspector General, documents from outside the Government related to an audit or investigation, documents prepared in response to a request from or addressed to the Office of the Inspector General, or other documents originating within the Office of the Inspector General, after consultation with the General Counsel or designee on an appeal of an initial determination to the Inspector General.

(b) The Assistant Inspectors General or their designees are responsible for making initial determinations under § 1206.603 and § 1206.604 with respect to audit and investigative documents originating in the Office of the Inspector General, documents from outside the Government related to an audit or investigation, documents prepared in response to a request from or addressed to the Office of the Inspector General, or other documents originating with the Office of the Inspector General, after consultation with the Attorney-Advisor to the Inspector General or designee.

(c) The Inspector General or designee is responsible for ensuring that requests for agency records as specified in paragraphs (a) and (b) of this section are processed and initial determinations are made within the time limits specified in Subpart 6 of this part.

(d) The Inspector General or designee is responsible for determining whether unusual circumstances exist under § 1206.608 as would justify the extension of the time limit for an initial or final determination, for records as specified in paragraphs (a) and (b) of this section.

(e) Records as specified in paragraphs (a) and (b) of this section include any records located at Regional Inspector General Offices as well as records located at the Headquarters Office of the Inspector General.

§ 1206.505 Delegation of authority.

Authority necessary to carry out the responsibilities specified in this subpart is delegated from the Administrator to the officials named in this subpart.

Subpart 6—Procedures

§ 1206.600 Requests for records.

A member of the public may request an agency record by mail or in person from the Freedom of Information Act (FOIA) Office having cognizance over the record requested or from the NASA Headquarters FOIA Office.

[54 FR 49750, Dec. 1, 1989]

§ 1206.601 Mail requests.

In view of the time limits under 5 U.S.C. 552(a)(6) for an initial determination on a request for an agency record (see § 1206.603), a request by mail must meet the following requirements:

(a) The request must be addressed to an appropriate NASA FOIA Office or otherwise be clearly identified on the envelope and in the letter as a request for an agency record under the "Freedom of Information Act".

(b) The request must identify the record requested or reasonably describe it in such a manner as to enable a professional NASA employee who is familiar with the subject area of the request to identify and locate the record with a reasonable amount of effort. NASA need not comply with a blanket or categorical request (such as "all matters relating to" a general subject) where it is not feasible reasonably to determine what is sought. NASA will in good faith endeavor to identify and locate the record sought and will consult with the requester when necessary and appropriate for that purpose. However, as provided in § 1206.203, NASA will undertake no obligation to compile or create information or records not already in existence at the time of the request.

(c) If a fee is chargeable under Subpart 7 of this part for search or duplication costs incurred in connection with a request for an agency record, and the requester knows the amount of the fee at the time of the request, the request should be accompanied by a check or money order payable in that amount to the "National Aeronautics and Space Administration." NASA cannot be responsible for cash sent by mail; stamps will not be accepted. If the amount of the fee chargeable is not known at the time of the request, the requester will be notified in the initial determination (or in a final determination in the case of an appeal) of the amount of the fee chargeable (see § 1206.608(c)). For circumstances in which advance payment of fees is required, see § 1206.704.

[52 FR 41407, Oct. 28, 1987, as amended at 54 FR 49750, Dec. 1, 1989]

§ 1206.602 Requests in person.

(a) A member of the public may request an agency record in person at a NASA FOIA Office (see § 1206.401) during the duty hours of the installation.

(b) A request at an FOIA Office must identify the record requested or reasonably describe it as provided in § 1206.601(b).

(c) If the record requested is located at the FOIA Office or otherwise readily obtainable, it shall be made available to the requester upon the payment of any fees that are chargeable (see Subpart 7 of this part), which fees may be paid in cash or by a check or money order payable to the "National Aeronautics and Space Administration." If the record requested is not located at the FOIA Office or otherwise readily obtainable, the request will be docketed at the FOIA Office and processed in accordance with the procedures in §§ 1206.603 and 1206.604, with any fee chargeable being handled in accordance with § 1206.601(c).

[52 FR 41407, Oct. 28, 1987, as amended at 54 FR 49750, Dec. 1, 1989]

§ 1206.603 Procedures and time limits for initial determinations.

(a) Except as provided in § 1206.608, an initial determination on a request for an agency record, addressed in accordance with § 1206.601(a) or made in person at a NASA FOIA Office, shall be made, and the requester shall be sent notification thereof, within ten working days after receipt of the request, as required by 5 U.S.C. 552(a)(6).

(b) An initial determination on a request for an agency record by mail not addressed in accordance with § 1206.601(a) shall be made, and the requester shall be sent notification thereof, within ten working days after the correspondence is recognized as a request for an agency record under the "Freedom of Information Act" and received by the appropriate NASA FOIA Office. With respect to such a request, unless an initial determination can reasonably be made within ten working days of the original receipt, the request will be promptly acknowledged and the requester notified of the date the request was received at that FOIA Office and that an initial determination on the request will be made within ten working days of that date.

(c) If it is determined that the requested record (or portion thereof) will be made available, and if the charges are under $250, NASA will either send a copy of the releasable record and a bill for the fee or send the initial determination and a bill for the fee to the requester. In the latter case the documents will be released when the fee is received. If the fee chargeable is over $250, a request for payment of the fee will always be sent with the initial determination, and the records will be mailed only upon receipt of payment. When records are sent before payment is received, the fact that interest will be charged from the 31st day after the day of the response shall be stated in the response. The date of the mailing of an initial determination, with or without the record(s), shall be deemed to satisfy the time limit for initial determinations.

(d) Any notification of an initial determination that does not comply fully with the request for an agency record shall include a statement of the reasons for the adverse determination, include the name and title of the person making the initial determination, and notify the requestor of the right to appeal to the Administrator, or the Inspector General, as appropriate, under § 1206.605.

[52 FR 41407, Oct. 28, 1987, as amended at 54 FR 49750, Dec. 1, 1989]

§ 1206.604 Request for records which exist elsewhere.

(a) If a request for an agency record is received by an FOIA Office not having cognizance of the record (for example, where a request is submitted to one NASA installation or Headquarters and the requested record exists only at another NASA installation), the FOIA Office receiving the request shall promptly forward it to the NASA FOIA Office having cognizance of the record requested. That installation shall acknowledge the request and inform the requester that an initial determination on the request will be sent within ten working days from the date of receipt by such installation.

(b) If a request is received for agency records which exist at two or more installations, the FOIA Office receiving the request shall undertake to comply with the request, if feasible, or to forward the request (or portions thereof) promptly to a more appropriate installation for processing. The requester shall be kept informed of the actions taken to respond to the request.

(c) If a request is received by a NASA FOIA Office for a record of another agency, the requester shall promptly be informed of that fact, and the request shall be returned to the requester, with advice as to where the request should be directed.

[54 FR 49750, Dec. 1, 1989]

§ 1206.605 Appeals.

(a) A member of the public who has requested an agency record in accordance with § 1206.601 or § 1206.602, and who has received an initial determination which does not comply fully with the request, may appeal such an adverse initial determination to the Administrator, or, for records as specified in § 1206.504, to the Inspector General under the procedures of this section.

(b) The Appeal must:

(1) Be addressed to the Administrator, NASA Headquarters, Washington, DC 20546, or, for records as specified in § 1206.504, to the Inspector General, NASA Headquarters, Washington, DC 20546.

(2) Be identified clearly on the envelope and in the letter as an "Appeal under the Freedom of Information Act";

(3) Include a copy of the request for the agency record and a copy of the adverse initial determination;

(4) To the extent possible, state the reasons why the requester believes the adverse initial determination should be reversed; and

(5) Be sent to the Administrator or the Inspector General, as appropriate, within 30 calendar days of the date of receipt of the initial determination.

(c) An official authorized to make a final determination may waive any of the requirements of paragraph (b) of this section, in which case the time limit for the final determination (see § 1206.607(a)) shall run from the date of such waiver.

§ 1206.606 Requests for additional records.

If, upon receipt of a record (or portions thereof) following an initial determination to comply with a request, the requestor believes that the materials received do not comply with the request, the requestor may elect either to request additional records under the procedures of § 1206.601 or § 1206.602, or to file on appeal under the procedures of § 1206.605, in which case the appeal must be sent to the Administrator, or to the Inspector General, in the case of records as specified in § 1206.504, within 30 days of receipt of the record (or portions thereof), unless good cause is shown for any additional delay.

§ 1206.607 Actions on appeals.

(a) Except as provided in § 1206.608, the Administrator or designee, or in the case of records as specified in § 1206.504, the Inspector General or designee, shall make a final determination on an appeal and notify the requestor thereof, within 20 working days after the receipt of the appeal.

(b) If the final determination reverses in whole or in part the initial determination, the record requested (or portions thereof) shall be made available promptly to the requester, as provided in the final determination.

(c) If the final determination sustains in whole or in part an adverse initial determination, the notification of the final determination shall:

(1) Explain the basis on which the record (or portions thereof) will not be made available;

(2) Include the name and title of the person making the final determination;

(3) Include a statement that the final determination is subject to judicial review under 5 U.S.C. 552(a)(4); and

(4) Enclose a copy of 5 U.S.C. 552(a)(4).

§ 1206.608 Time extensions in unusual circumstances.

(a) In "unusual circumstances" as that term is defined in § 1206.101(f), the time limits for an initial determination (see §§1206.603 and 1206.604) and for a final determination (see § 1206.607) may be extended, but not to exceed a total of ten working days in the aggregate in the processing of any specific request for an agency record.

(b) If an extension of time under this section would be required, the requester shall be promptly notified of the reasons therefor and the date when a determination will be sent.

(c) If a record described in a request cannot be located within the ten-working-day time limit for an initial determination, after consultation with a professional NASA employee who is familiar with the subject area of the request, that fact normally will justify an initial determination that the record requested cannot be identified or located, rather than a decision that an extension of time under this section would be appropriate.

(d) In exceptional circumstances, if it would be impossible to complete a search for or review of agency records within the ten-working-day period for an initial determination, an official authorized to make an initial determination or his designee may seek an extension of time from the requester. If such an extension of time can be agreed upon, that fact should be clearly documented and the initial determination made within the extended time period; if not, an initial determination that the record cannot be identified or located, or reviewed, within the ten-working-day time limit shall be made under § 1206.603.

§ 1206.609 Litigation.

In any instance in which NASA is sued in connection with a request for an agency record under this part, the matter shall promptly be referred to the General Counsel together with a report on the details and status of the request. In such a case, if a final determination with respect to the request has not been made, such a determination shall be made as soon as possible, under procedures prescribed by the General Counsel in each case.

§ 1206.610 Notice to submitters of commercial information.

(a) *General policy.* Upon receipt of a request for commercial information pursuant to the Freedom of Information Act, the National Aeronautics and Space Administration shall provide the submitter with notice of the request in accordance with the requirements of this section.

(b) *Notice to submitters.* Except as provided in paragraph (g) or (h) of this section, the agency shall make a good faith effort to provide a submitter with prompt notice of a request appearing to encompass its commercial information whenever required under paragraph (c) of this section. Such notice shall identify the commercial information requested and shall inform the submitter of the opportunity to object to its disclosure in accordance with paragraph (d) of this section. If the submitter would not otherwise have access to the document that contains the information, upon the request of the submitter, the agency shall provide access to, or copies of, the records or portions thereof containing the commercial information. This notice shall be provided in writing upon the request of the submitter. Whenever the agency provides notice pursuant to this section, the agency shall advise the requester that notice and opportunity to comment are being provided to the submitter.

(c) *When notice is required.* The agency shall provide a submitter with notice of a request whenever the information is subject to an understanding of confidentiality between the agency and the submitters, or the agency has reason to believe that the information constitutes commercial information.

(d) *Opportunity to object to disclosure.* Through the notice described in paragraph (b) of this section, the agency shall afford a submitter a reasonable period within which to provide the agency with a detailed statement of any objection to disclosure. This period shall not exceed 10 working days from the date after which the agency can reasonably assume receipt of notice by the submitter, unless the submitter provides a reasonable explanation justifying additional time to respond. If the agency does not receive a response from the submitter within this period, the agency shall proceed with its review of the information and initial determination. The submitter's response shall include all bases, factual or legal, for withholding any of the information pursuant to Exemption 4. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA.

(e) *Notice of intent to disclose.* The agency shall carefully consider any objections of the submitter in the course of determining whether to disclose commercial information. Whenever the agency decides to disclose commercial information over the objection of a submitter, the agency shall forward to the submitter a written statement which shall include:

(1) A brief explanation as to why the agency did not agree with any objections;

(2) A description of the commercial information to be disclosed, sufficient to identify the information to the submitter; and

(3) A date after which disclosure is expected. Such notice of intent to disclose shall be forwarded a reasonable number of working days prior to the date specified in paragraph (e)(3) of this section. A copy of this statement shall be forwarded to the requester at the same time, unless the description required by paragraph (e)(2) of this section would constitute a premature release, in which case the description shall be appropriately redacted and the requester so advised.

(f) *Notice of FOIA lawsuit.* Whenever a requester brings suit seeking to compel disclosure of commercial information covered by paragraph (c) of this section, the agency shall promptly notify the submitter. Whenever a submitter brings suit against the agency in order to prevent disclosure of commercial information, the agency shall promptly notify the requester.

(g) *Exceptions to notice requirements.* The notice requirements of this section shall not apply if:

(1) The information has been published or otherwise made available to the public;

(2) Disclosure of the information is required by law (other than 5 U.S.C. 552);

(3) The submitter has received notice of a previous FOIA request which encompassed the information requested in the later request, and the agency intends to withhold information in the same manner as in the previous FOIA request;

(4) Upon submitting the information or within a reasonable period thereafter, (i) the submitter reviewed its information in anticipation of future requests pursuant to the FOIA, (ii) provided the agency a statement of its objections to disclosure consistent with that described in paragraph (d) of this section, and (iii) the agency intends to release information consistent with the submitter's objections; or

(5) Notice to the submitter may disclose information exempt from disclosure pursuant to 5 U.S.C. 552(b)(7).

(h) An additional limited exception to the notice requirements of this section, to be used only when all of the following exceptional circumstances are found to be present, authorizes the agency to withhold information which is the subject of a FOIA request, based on Exemption 4 (5 U.S.C. 552(b)(4)), without providing the submitter individual notice:

(1) The agency would be required to provide notice to over 10 submitters, in which case, notification may be accomplished by posting or publishing the notice in a place reasonably calculated to accomplish notification;

(2) Absent any response to the published notice, the agency determines that if it provided notice as is otherwise required by paragraph (c) of this section, it is reasonable to assume that the submitter would object to disclosure of the information based on Exemption 4; and,

(3) If the submitter expressed the anticipated objections, the agency would uphold those objections.

This exemption shall be used only with the approval of the Chief Counsel of the Field Installation, the Attorney-Advisor to the Inspector General, or the Associate General Counsel responsible for responding to the request. This exception shall not be used for a class of documents or requests, but only as warranted by an individual FOIA request.

[54 FR 13518, Apr. 4, 1989, as amended at 54 FR 49750, Dec. 1, 1989]

Subpart 7—Search, Review, and Duplication Fees

§ 1206.700 Schedule of fees.

The fees specified in this section shall be charged for searching for, reviewing, and/or duplicating agency records made available in response to a request under this part.

(a) *Copies.* For copies of documents such as letters, memoranda, statements, reports, contracts, etc., $0.10 per copy of each page. For copies of oversize documents, such as maps, charts, etc., $0.15 for each reproduced copy per square foot. These charges for copies include the time spent in duplicating the documents. For copies of still photographs, blueprints, videotapes, engineering drawings, hard copies of aperture cards, etc., the fee charged will reflect the full direct cost to NASA of reproducing or copying the record.

(b) *Clerical searches.* For each one quarter hour spent by clerical personnel in searching for an agency record in response to a request under this part, $2.25.

(c) *Nonroutine, nonclerical searches.* Where a search cannot be performed by clerical personnel, for example, where the task of determining which records fall within a request and collecting them requires the time of professional or managerial personnel, and where the amount of time that must be expended in the search and collection of the requested records by such higher level personnel is substantial, charges for the search may be made at a rate in excess of the clerical rate, namely for each one quarter hour spent by such higher level personnel in searching for a requested record, $4.50.

(d) *Review of records.* For commercial use requests only, where time is spent reviewing to determine whether they are exempt from mandatory disclosure, a charge may be made at the rate for each one quarter hour spent by an attorney, $6.25. No charge shall be made for the time spent in resolving general legal or policy issues regarding the application of exemptions. This charge will only be assessed the first time NASA reviews a record and not at the administrative appeal level.

(e) *Computerized records.* Because of the diversity in the types and configurations of computers which may be required in responding to requests for agency records maintained in whole or in part in computerized form, it is not feasible to establish a uniform schedule of fees for search and printout of such records. In most instances, records maintained in computer data banks are available also in printed form and the standard fees specified in paragraph (a) of this section shall apply. If the request for an agency record required to be made available under this part requires a computerized search or printout, the charge for the time of personnel involved shall be at the rates specified in paragraphs (b) and (c) of this section. The charge for the computer time involved and for any special supplies or materials used, shall not exceed the direct cost to NASA. This charge may be as high as $125.00 per quarter hour. Before any computer search or printout is undertaken in response to a request for an agency record, the requester shall be notified of the applicable unit costs involved and the total estimated cost of the search and/or printout.

(f) *Other search and duplication costs.* Reasonable standard fees, other than as specified in paragraphs (a) through (e) of this section, may be charged for additional direct costs incurred in searching for or duplicating an agency record in response to a request under this part. Charges which may be made under this paragraph include, but are not limited to, the transportation of NASA personnel to places of record storage for search purposes or freight charges for transporting records to the personnel searching for or duplicating a requested record.

(g) *Charges for special services.* Complying with requests for special services such as those listed in (g) (1), (2), and (3) of this section is entirely at the discretion of NASA. Neither the FOIA nor its fee structure cover these kinds of services. To the extent that NASA elects to provide the following services, it will levy a charge equivalent to the full cost of the service provided:

(1) Certifying that records are true copies;

(2) Sending records by special methods such as express mail.

(3) Packaging and mailing bulky records that will not fit into the largest envelope carried in the supply inventory.

(h) *Unsuccessful or unproductive searches.* Search charges, as set forth in paragraphs (b) and (c) of this section, may be made even when an agency record which has been requested cannot be identified or located after a diligent search and consultation with a professional NASA employee familiar with the subject area of the request, or if located, cannot be made available under Subpart 3 of this part. Ordinarily, however, fees will not be charged in such instances unless they are substantial (over $50.00) and the requester has consented to the search after having been advised that it cannot be determined in advance whether any records exist which can be made available (see § 1206.704) and that search fees will be charged even if no record can be located and made available.

(i) *Fees not chargeable.*

(1) NASA will not charge for the first 100 pages of duplication and the first 2 hours of search time (meaning manual search) except to requesters seeking documents for commercial use.

(2) If the cost to be billed to the requester is equal to or less than $5.00, no charges will be billed.

§ 1206.701 Categories of requesters.

There are four categories of FOIA requesters: Commercial use requesters; educational and noncommercial scientific institutions; representatives of the news media; and all other requesters. The Act prescribes specific levels of fees for each of these categories:

(a) *Commercial use requesters.* When NASA receives a request for documents appearing to be for commercial use, it will assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Requesters must reasonably describe the records sought. Moreover, in the case of such a request, NASA will not consider a request for waiver or reduction of fees based upon an assertion that disclosure would be in the public interest. Commercial use requesters are not entitled to 2 hours of free search time nor to 100 free pages of reproduction of documents.

(b) *Educational and noncommercial scientific institition requesters.* NASA shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request being made is authorized by and under the auspices of a qualifying institution and that the records are not being sought for a commercial use, but are being sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a noncommercial scientific institution) research. Requesters must reasonably describe the records sought.

(c) *Requesters who are representatives of the news media.* NASA shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must demonstrate that he/she meets the criteria in § 1206.101(o) of this part, and his/her request must not be made for a commercial use. Requesters must reasonably describe the records sought.

(d) *All other requesters.* NASA shall charge requesters who do not fit into any of the categories mentioned in this section, fees which recover the full direct reasonable cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first 2 hours of search time shall be furnished without charge. Moreover, requests from individuals for records about themselves located in NASA's systems of records will continue to be processed under the fee provisions of the Privacy Act of 1974, which permits fees only for reproduction. Requesters must reasonably describe the records sought.

§ 1206.702 Waiver or reduction of fees.

The burden is always on the requester to provide the evidence to qualify him/her for a fee waiver or reduction.

(a) NASA shall furnish documents without charge or at reduced charges in accordance with 5 U.S.C. 552(a)(4)(A)(iii), provided that: (1) Disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and (2) it is not primarily in the commercial interest of the requester.

(b) Where these two statutory requirements are satisfied, based upon information supplied by the requester or otherwise made known to NASA, the FOIA fee shall be waived or reduced. Where one or both of these requirements is not satisfied, a fee waiver or reduction is not warranted under the statute.

(c) In determining whether disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, the following considerations shall be applied:

(1) Whether the subject of the requested records concerns "the operations or activities of the government";

(2) Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;

(3) Whether disclosure of the requested information will contribute to "public understanding"; and

(4) Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities.

(d) In determining whether disclosure of the information "is not primarily in the commercial interest of the requester," the following consideration shall be applied:

(1) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and if so,

(2) Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

§ 1206.703 Aggregation of requests.

A requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When NASA has reason to believe that a requester or a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, NASA will aggregate any such requests and charge accordingly. NASA will consider that multiple requests made within a 30-day period were so intended, unless there is evidence to the contrary. Where the relevant time period exceeds 30 days, NASA will not assume such a motive, unless there is evidence to the contrary. In no case will NASA aggregate multiple requests on unrelated subjects from one requester.

§ 1206.704 Advance payments.

(a) NASA will not require a requester to make an advance payment, i.e., payment before work is commenced or continued on a request, unless:

(1) NASA estimates or determines that the allowable charges are likely to exceed $250. NASA will notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(2) A requester has previously failed to pay a fee in a timely fashion (within 30 days of billing), then NASA may require the requester to pay the full amount owed plus any applicable interest as provided below (see § 1206.706(a)), or demonstrate that he/she has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requester.

(b) When NASA acts under paragraphs (a) (1) and (2) of this section, the administrative time limits will begin only after NASA has received the fee payments described in paragraph (a) of this section.

§ 1206.705 Form of payment.

Payment by mail shall be made by check or money order payable to the "National Aeronautics and Space Administration" and sent to the NASA office which processed the request.

§ 1206.706 Nonpayment of fees.

(a) *Interest to be charged.* Requesters are advised that should they fail to pay the fees assessed, they may be charged interest on the amount billed starting on the 31st day following the day on which the billing was sent. Interest will be at the rate prescribed in section 3717 of Title 31 U.S.C.

(b) *Applicability of Debt Collection Act of 1982 (Pub. L. 97-365).* Requesters are advised that if full payment is not received within 60 days after the billing was sent, the procedures of the Debt Collection Act may be invoked 14 CFR 1261.407-1261.409). These procedures include three written demand letters at not more than 30-day intervals, disclosure to a consumer reporting agency, and the use of a collection agency, where appropriate.

Subpart 8—Failure to Release Records to the Public

§ 1206.800 Failure to release records to the public.

(a) Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the FEDERAL REGISTER under § 1206.200(a) and not so published.

(b) A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied upon, used, or cited as precedent by NASA against any member of the public only if it has been indexed and either made available or published as provided by § 1206.200(b) or if the member of the public has actual and timely notice of the terms thereof.

(c) Failure to make available an agency record required to be made available under this part could provide the jurisdictional basis for a suit against NASA under 5 U.S.C. 552(a)(4)(B) through (G), which provides as follows:

> (B) On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action.
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> (C) Notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to any complaint made under this subsection within thirty days after service upon the defendant of the pleading in which such complaint is made, unless the court otherwise directs for good cause shown.
>
> (D) Except as to cases the court considers of greater importance, proceedings before the district court, as authorized by this subsection, and appeals therefrom, take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.
>
> (E) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.
>
> (F) Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Civil Service Commission shall promptly initiate a preceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Commission, after investigation and consideration of the evidence submitted, shall submit its findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer of employee or his representative. The administrative authority shall take the corrective action that the Commission recommends.
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> (G) In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member.

Subpart 9—Annual Report

§ 1206.900 Requirements for annual report.

On or before March 1 of each calendar year, NASA shall submit a report covering the preceding calendar year to the Speaker of the House of Representatives and President of the Senate for referral to the appropriate committees of the Congress. The report shall include the following information:

(a) The number of determinations made by NASA not to comply with requests for records made to the Agency under Subpart 6 of this part and the reasons for each such determination;

(b) The number of appeals made by persons under Subpart 6 of this part, the result of such appeals, and the reason for the action upon each appeal that results in a denial of information;

(c) The names and titles or positions of each person responsible for the denial of records requested under this part, and the number of instances of participation for each;

(d) The results of each proceeding conducted pursuant to 5 U.S.C. 552(a)(4) (B) through (G) (see § 1206.800(c)), including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken;

(e) A copy of the current version of this Part 1206 and any other rules or regulations made by NASA regarding 5 U.S.C. 552;

(f) A copy of the current fee schedule and the total amount of fees collected by NASA for making records available under this part; and

(g) Such other information as indicates efforts by NASA to administer fully this part.

PART 1207—STANDARDS OF CONDUCT

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1207.702 Procedures for administrative disciplinary hearing.
1207.703 Appeal from initial decision.
1207.704 Administrative sanctions.

Subpart H—Post-Employment Regulations

1207.800 Scope of subpart.
1207.801 Exemption for scientific and technological communications.

AUTHORITY: Ethics in Government Act of 1978, as amended by Pub. L. 96-19 and Pub. L. 96-28; EO 11222; 18 U.S.C. 201-219; 5 CFR Parts 734, 735, 737, 738, and 755.

SOURCE: 52 FR 22755, June 16, 1987, unless otherwise noted.

Subpart A—General Provisions

§ 1207.100 Scope of part.

The provisions of this Part 1207 prescribe regulations for the maintenance of the high ethical standards of conduct required of NASA employees in carrying out their duties and responsibilities.

§ 1207.101 Applicability.

The provisions of this part are applicable to:

(a) All regular officers and employees of NASA (referred to as "employees").

(b) All civilian and military personnel of other Government agencies regularly detailed to NASA (also referred to as "employees"); however, disciplinary action may be effected against such civilian or military personnel only by the parent employing agency or military service.

§ 1207.102 Definitions.

(a) A *Key Official* is any officer or employee who is in a position that required the filing of a public financial disclosure report in accordance with Title II of the Ethics in Government Act of 1978 (see § 1207.404) or who is in one of the following positions: astronaut, astronaut candidate, procurement officer, or chief counsel.

(b) The *Office of Government Ethics* is an office created within the Office of Personnel Management by statute (the Ethics in Government Act of 1978) and charged with the responsibility to oversee ethics matters in the Executive Branch.

(c) The term *particular matter* is not defined in the statutes, but is used in context as follows: . . . *any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest or other particular matter.* See 5 CFR 737.5 for examples.

(d) The term *personally and substantially* is not defined in the statutes, but examples of personal and substantial involvement include participation *through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise . . . .*

(e) The term *official responsibility* is defined by statute to mean the *direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action.*

§ 1207.103 General ethical standards of conduct.

(a) *Misuse of public position.* (1) Each employee will refrain from any use of official position which is motivated by, or has the appearance of being motivated by, the desire for private gain for himself/herself or other persons.

(2) If an employee acquires information in the course of performing Government duties that is not generally available to those outside the Government, the employee will not use this information to further a private interest or for the special benefit of a business or other entity in which the employee has a financial or other interest. See § 1207.402 for guidance on what constitutes a financial interest.

(3) An employee will not use a Government position in any way to coerce, or give the appearance of coercing, another person to provide any financial benefit to the employee or to other persons.

(4) An employee will avoid any action, whether or not specifically prohibited by law or regulation (including this regulation), which might result in or create the appearance of:

(i) Using public office for private gain;

(ii) Giving preferential treatment to any organization or person;

(iii) Impeding Government efficiency or economy;

(iv) Losing independence or impartiality of action;

(v) Making a Government decision outside official channels; or

(vi) Affecting adversely the confidence of the public in the integrity of the Government.

(b) *Use of government property.* An employee will not directly or indirectly use or allow the use of Government property of any kind, including property leased to the Government, for other than officially approved activities. An employee has an affirmative duty to protect and conserve Government property, including equipment, supplies, and other property entrusted or issued to the employee.

(c) *Indebtedness.* The indebtedness of NASA employees is considered to be essentially a matter of their own concern. Except as otherwise provided by law, NASA will not be placed in the position of acting as a collection agency or of determining the validity or amount of contested debts. Nevertheless, NASA employees are expected to honor in a proper and timely manner debts which are acknowledged by the employee to be valid or which have been reduced to final judgment by a court, and to make or adhere to satisfactory arrangements for the settlement of such debts. In accordance with Pub. L. 93-647 (42 U.S.C. 659), NASA may become involved in the attachment of NASA employees' wages or salary for enforcement of child support and alimony obligations. In accordance with 5 U.S.C. 5514, NASA may deduct indebtedness to the United States from employees' pay. Employees are also expected to meet their responsibilities for payment of Federal, state, and local taxes. For the purpose of this paragraph, *in a proper and timely manner* means in a manner which does not cause undue disruption to NASA operations and which NASA determines does not, under the circumstances, reflect adversely on NASA as the employing agency.

(d) *Gambling, betting, and lotteries.* While on Government owned or leased property, or while on duty for the Government, NASA employees will not participate in any gambling activity, including the operation of a gambling device; in conducting a lottery or pool; in participating in a game for money or property; or in selling or purchasing a numbers slip or ticket. However, participation in federally sponsored fund-raising activities conducted pursuant to Executive Order 10927, or in NASA-approved activities, and not otherwise prohibited by state criminal laws, is not precluded.

(e) *Autographs.* In response to autograph requests, although it is the prerogative of each employee to accept or refuse any and all requests, NASA employees should recognize their personal responsibilities for treating the public-at-large fairly and courteously. Accordingly, the following guidelines are to be observed: No autograph should be treated as a commercial commodity; nothing of value should be requested or accepted in exchange for an autograph; generally no more than two autographs for the same individual or concern should be given; autographs should not be provided when it is apparent that they will be used commercially by the requesting individual or concern. For further guidance, see paragraph 7h in NASA Management Instruction (NMI) 1380.6, "Conduct of Philatelic Activities and Services at NASA Installations."

(f) *General conduct prejudicial to the Government.* NASA employees will not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or any other conduct prejudicial to the Government.

(g) *Miscellaneous statutory provisions.* Each employee will become acquainted with the statutory provisions that relate to his/her ethical and other conduct, among which the following are particularly relevant:

(1) House Concurrent Resolution 175, 85th Congress, 2d Session, 72 Stat. B12, the "Code of Ethics for Government Service."

(2) Chapter 11 of Title 18, United States Code, relating to bribery, graft, and conflicts of interest, as appropriate to the employees concerned (see Appendix C).

(3) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(4) The prohibitions against disloyalty and striking (5 U.S.C. 7311; 18 U.S.C. 1918).

(5) The prohibition against the employment of a member of a Communist organization (50 U.S.C. 784).

(6) The prohibitions against:

(i) The disclosure of classified information (18 U.S.C. 798; 50 U.S.C. 783); and

(ii) The disclosure of private or proprietary information (18 U.S.C. 1905).

(7) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352).

(8) The prohibition against the misuse of a Government motor vehicle or aircraft (31 U.S.C. 1349(b)).

(9) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

(10) The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (13 U.S.C. 1917).

(11) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(12) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

(13) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(14) The prohibitions against:

(i) Embezzlement of Government money or property (18 U.S.C. 641);

(ii) Failing to account for public money (18 U.S.C. 643); and

(iii) Embezzlement of the money or property of another person in the possession of an employee by reason of his/her employment (18 U.S.C. 654).

(15) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(16) The prohibitions against proscribed political activities ("The Hatch Act" 5 U.S.C. 7324-7327; 18 U.S.C. 602, 603, and 607).

(17) The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

(18) The prohibition against a public official appointing, employing, promoting, or advancing a relative of the official in an agency, or advocating any such actions in an agency for such a relative (5 U.S.C. 3110).

(19) The prohibition against discrimination for or against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, handicapping condition, marital status or political affiliation (5 U.S.C. 2302(b)).

(20) The prohibition against:

(i) The disclosure of crop information and speculation thereon (18 U.S.C. 1902); and

(ii) The issuance of false crop reports (18 U.S.C. 2072).

(21) The prohibition against the acceptance of excessive honorariums (2 U.S.C. 441i) (see Appendix D). The foregoing statutes are available for review in the Chief Counsel's office at each installation.

§ 1207.104 Advisory service.

(a) When questions or problems arise concerning matters covered by this Part 1207, NASA employees may seek the advice and consultative services of the Designated Agency Ethics Official or a Deputy Ethics Official as designated in paragraph (c) of this section, or they may request a formal advisory opinion from the Office of Government Ethics in accordance with 5 CFR Part 738, Subpart C. Violation of any provision contained in this Part 1207 may be cause for appropriate disciplinary or remedial action. The latter includes, but is not limited to, divestiture by the employee of his/her conflicting interest, disqualification for particular assignments, or reassignment.

(b) The General Counsel of NASA is the Designated Agency Ethics Official and as such has the responsibilities, authorities, and duties as set forth in 5 CFR Part 738, Subpart B. The General Counsel shall act as the principal point of contact with the Office of Government Ethics and shall provide general oversight within NASA for the purpose of achieving uniform interpretation of this part.

(c) The following officials are designated as NASA Deputy Ethics Officials pursuant to 5 CFR 738.204(a):

(1) Deputy General Counsel;

(2) Associate General Counsel (General); also serves as Alternate Designated Agency Ethics Official;

(3) Chief Counsel at each NASA field or component installation.

(d) The Deputy Ethics Officials may carry out their responsibilities through designated subordinates; however, they shall retain ultimate responsibility for the functions assigned to them under this section.

(e) The Installation Personnel Officers shall:

(1) Maintain master lists of those employees who file public disclosure and confidential financial statements;

(2) Supply the appropriate employees with these forms;

(3) Receive the public disclosure and confidential financial statements and

ensure that they are completely filled out;

(4) Maintain the confidential financial statements and forward the public disclosure financial statements to the Chief Counsel at the installations and to the Associate General Counsel (General) in the case of Headquarters.

(5) Compile the necessary information for the Installation Directors and the Director, Headquarters Administration Division, as required by paragraph 6 in NMI 1900.3, "Confidential Supplementary Statements of Employment and Financial Interests;" and

(6) Refer employees who request ethics counseling to the Chief Counsel at the installations or to the Associate General Counsel (General) at Headquarters.

(f) Any employee who has been solicited to commit, or who observes or receives an allegation of a possible violation of the provisions of Part 1207, shall, unless an allegation is based upon more gossip or rumor known to be false, promptly report such solicitation, observation or allegation to the Office of the Inspector General in accordance with the procedures of NMI 9950.1, "The NASA Investigations Program."

Subpart B—Acceptance of Gifts

§ 1207.200 Scope of subpart.

This subpart establishes NASA Policy with respect to the acceptance of gifts by NASA employees and their spouses and minor children. Violation of these regulations or any of the criminal statutes referred to in this subpart will subject the employee to administrative disciplinary action and/or criminal prosecution. The prohibitions of this subpart are in addition to statutory prohibitions relating to the corrupt solicitation or receipt of, or agreement to receive, anything of value in connection with an employee's performance of official duty (18 U.S.C. 201), and the unlawful solicitation or receipt of, or agreement to receive, compensation for services rendered by an employee in connection with matters affecting the Government (18 U.S.C. 203). Gifts from foreign governments and foreign governmental organizations are covered by NMI 1030.1, "Acceptance by Employees of Gifts or Decorations from Foreign Governments."

§ 1207.201 Definition.

The term *gift* as used in this subpart shall refer to the receipt of any gift, gratuity, entertainment (including food, refreshments, tickets, or invitations to performances and other events), favor, loan, transportation, accommodations, or any other thing of monetary value for which fair market value has not been paid. For purposes of this definition, participation in a carpool shall not be considered receipt of a gift.

§ 1207.202 Policy.

(a) It is NASA policy not to interfere in the private lives of NASA employees and their families. However, certain conduct involving acceptance of gifts must be regulated in view of the nature of the official duties of the employee and the special responsibilities that are assumed by a person who accepts Federal employment.

(b) Except as provided in this subpart, the direct or indirect solicitation or acceptance by a NASA employee or the spouse or minor child of a NASA employee of any gift from any person, corporation, or group is forbidden if the person, corporation, or group:

(1) Has, or is seeking to obtain, contractual or other business or financial relationships with NASA; or

(2) Has interests which may be substantially affected by such employee's performance or nonperformance of official duty; or

(3) Is in any way attempting to affect the employee's official action. For purposes of this subpart, the term corporation or group includes employees of such corporations or groups.

(c) There are certain exceptions to the foregoing general rule which are set forth in paragraph (d) of this section. Those exceptions are to be strictly construed. A reciprocal gift to a prohibited donor (such as alternating who pays for lunch) does not remove the prohibition on receiving the original gift. Reciprocity is not an exception to the gift rule. In determining whether one or more of the exceptions apply in any particular circumstance, each NASA employee shall avoid any situation which might bring discredit to or embarrass the Government or NASA, or which might reflect a real or apparent conflict of interest. NASA employees will so govern their conduct in light of this subpart as to have no difficulty in justifying their actions if required to do so.

(d) The following are exceptions to the general rule set forth in paragraph (b) of this section:

(1) Acceptance of food and nonalcoholic beverages of nominal value at a contractor's plant or place of business on an infrequent basis when the conduct of official business within the plant or place of business will be facilitated and when no provisions exist for individual payment. Acceptance of doughnuts and coffee or their equivalent is permitted when official business will be facilitated. An employee shall avoid all other situations (e.g., dining in private clubs or acceptance of food and beverages in excess of nominal value) where there is no opportunity for individual payment for the employee's food or refreshments at the time.

(2) Instances in which the interests of the Government are served by participation of a NASA employee in widely attended luncheons, dinners, and similar gatherings sponsored by industrial, educational, technical, or professional associations for the discussion of matters of mutual interest. Participation in such events is permitted only when the host is an association and not a private company and only when approved by the employee's supervisor. The Director of a Field or Component Installation and Officials-in-Charge of Headquarters Offices and those above may approve their own attendance at such functions when they are part of or related to official duties. Acceptance of gratuities, food, or refreshments from a private company in connection with such association's activities (e.g., *hospitality suites*) is forbidden.

(3) Acceptance of gifts where there is a family or obvious personal relationship, including dating relationship, between the donor and the recipient (whether an employee, spouse, or dependent) where it is clear that it is the relationship instead of the business of the persons concerned that is the motivating factor for the gift and where it is reasonably clear from the circumstances that the gift is paid for by the donor and not either directly or by reimbursement by a corporation, group, or any other person described in paragraph (b) of this section.

(4) Purchase of articles at advantageous rates where such rates are offered to Government employees as a class or to NASA employees where, but for geographical separation from other federal facilities, they would have been offered to all Government employees.

(5) Acceptance by a spouse or dependent, for their use, of gifts where there is a business relationship between the recipient and the donor, where the circumstances make it clear that it is that business relationship which is the motivating factor for the gift.

(6) Acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans.

(7) Acceptance of unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, or other items of nominal value (i.e., items estimated to cost less than $10.00).

(8) Acceptance of contractor-provided transportation and lodging expenses for the purpose of a job interview at the prospective employer's site and/or a house hunting trip in the locale of the new employment, provided that the offer to pay such expenses and the stated purpose of the trip are reduced to writing in advance by the prospective employer, and the employee obtains in advance the written consent of the Designated Agency Ethics Official or the Official's Deputy. The employee is required to disqualify himself/herself from any matters pertaining to the prospective employer during the time he/she is actively considering the future employment opportunity. There is a criminal conflict of interest statute (18 U.S.C. 208) which prohibits an employee from

participating personally and substantially in a particular matter in which he or she, or any person or organization with which the employee is negotiating or has any arrangement concerning prospective employment, has a financial interest.

(9) Special situations in which the Associate Administrator for Management, after consultation with the General Counsel, determines in advance in writing that the interest of the Government will be served by an employee's participation in the employee's official capacity and as a designated NASA representative, in a public ceremony or other event at the expense of a private entity, or public educational institution, not covered in any other exception.

(10) Acceptance of contractor-provided local or intrastate transportation while on official business when alternative arrangements are impracticable or where such acceptance will facilitate the conduct of official business. Acceptance of intrastate transportation is permitted only when specifically authorized in the employee's travel authorization, or otherwise authorized in writing by the employee's supervisor as being in the interest of the Government.

(11) Acceptance of transportation, accommodations, subsistence, or services furnished under a reimbursable arrangement with NASA, from an industrial, educational, technical, or professional association, or from a state or local government agency, when authorized in the employee's travel authorization as being in the interest of the Government. When transportation, accommodations, subsistence, or services are furnished in-kind by such an association or agency, appropriate deductions shall be made in the travel, per diem, and other allowances otherwise payable to the employee. When transportation, accommodations, subsistence, or services are provided under a cash reimbursable arrangement, the reimbursement must be paid directly to NASA by check payable to the National Aeronautics and Space Administration; the employee will be reimbursed for necessary expenses by NASA in accordance with applicable laws and regulations. In no case shall a NASA employee accept benefits which are, under prudent standards, extravagant or excessive in nature. Advance approval, in accordance with paragraph 2b(2) in NMI 9710.8, "Delegation of Authority—To Execute Reimbursable Arrangements Solely for Travel and Related Matters," must be obtained in writing from the Associate Administrator for Management, with the concurrence of the General Counsel, prior to the acceptance of a reimbursable arrangement with individual private companies, universities, and colleges which fall within the scope of paragraph (b) of this section.

(12) Acceptance of transportation or other services provided by a private company in special situations in which the Associate Administrator for Management, with the concurrence of the General Counsel, determines in advance, in writing, that acceptance of such transportation or other services will facilitate the conduct of official business and be in the best interest of the Government. The model regulation (5 CFR 735.202(f)) prohibits an employee's acceptance of excessive and lavish in-kind reimbursements.

(13) Trophies, entertainment, prizes, or awards given for public service or achievement or given in games or contests which are clearly open to the public generally.

(14) Attendance at promotional vendor training or demonstration sessions. Acceptance of transportation, accommodations, subsistence, or other services provided by the vendor in connection with such training is subject to the requirements and limitations of this subpart.

(e) A gift which is prohibited under paragraph (b) of this section may be accepted on behalf of the agency only if (1) it is unconditional and voluntary; and (2) if refusal is not possible or practical. Such gifts shall be processed in accordance with NMI 1210.1, "Acceptance of Gifts by NASA." In particular, models and books on NASA programs may be accepted on behalf of NASA.

§ 1207.203 Gifts to superiors.

An employee will not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift presented as a contribution from another employee receiving less salary than the employee (5 U.S.C. 7351). The law requires that an employee who violates this provision shall be removed from Federal service. However, this paragraph does not prohibit the giving or acceptance of a voluntary gift of nominal value or a donation in a nominal amount made on a special occasion such as marriage, illness, death or retirement.

Subpart C—Outside Employment and Other Activity

§ 1207.300 Scope of subpart.

(a) This subpart prescribes NASA policy and procedures regarding outside employment or other outside activity of NASA employees. The prohibitions of this subpart are in addition to statutory prohibitions relating to receiving, agreeing to receive, or asking, demanding, soliciting, or seeking compensation for services in connection with matters affecting the Government (18 U.S.C. 203); unlawfully acting as agent or attorney or sharing in the interest in prosecuting any claim against the United States (18 U.S.C. 205); receiving outside compensation for performance of official duties (18 U.S.C. 209); and receiving excessive honorariums (2 U.S.C. 441i).

(b) As used in this part, the term *outside employment or other outside activity* refers to any work, service, or other activity performed by an employee with or without compensation, other than in the performance of his/her official duties. It includes such activities as writing and editing, publishing, teaching, lecturing, consulting services, self-employment, and other work or services.

§ 1207.301 Policy.

(a) NASA employees may not engage in outside employment or other outside activity that is not compatible with the full and proper discharge of the duties and responsibilities of their Government employment. Guidelines for determining compatibility are set forth in § 1207.302.

(b) NASA employees are encouraged to participate as private citizens in the affairs of their communities provided that the limitations prescribed in this paragraph and by these regulations are observed. Among these activities may be the following:

(1) Speaking, writing, editing, and teaching.

(2) Participation in the affairs of charitable, religious, professional, social, fraternal, nonprofit educational and recreational, public service, or civic organizations, and the acceptance of an award for a meritorious public contribution or achievement from any such organization.

(3) Participation in the activities of national, state, and local political parties not proscribed by law. In this connection employees should be particularly aware of the restrictions imposed on their activities by the "Hatch Act" (5 U.S.C. 7321-7327).

§ 1207.302 Guidelines and limitations.

Outside employment or other outside activity is incompatible with the full and proper discharge of an employee's duties and responsibilities, and hence is prohibited if it would:

(a) Involve the violation of a federal or state statute, a local ordinance, Executive order, or regulation to which the employee is subject.

(b) Give rise to a real or apparent conflict of interest situation even though no violation of a specific statutory provision was involved.

(c) Involve acceptance of a fee, compensation, benefit, gift, payment of expense, or any other thing of monetary value in circumstances in which acceptance might result in, or create the appearance of, a conflict of interest.

(d) Constitute or create the appearance of using public office for private gain.

(e) Bring discredit upon, or could reasonably cause unfavorable criticism of, the Federal Government or NASA, or lead to relationships which might impair public confidence in the integrity of the Federal Government or NASA.

(f) Involve work with any contractor, subcontractor, or grantee which is connected with any work being performed by that entity for NASA, or, would otherwise involve work for any person or organization which may be in a position to gain advantage in its dealings with the Government through the employee's exercise of official duties.

(g) Identify NASA or its employees officially with any organization manufacturing, distributing, or advertising a product relating to work conducted by NASA, or could create the false impression that it is an official action of NASA, or represents an official point of view. In any permissible outside employment, care must be taken to ensure that names and/or titles are not used to give the impression that the activity or product is officially endorsed or approved by NASA or is part of NASA activities.

(h) Involve use of the employee's time during official working hours, although this does not preclude the use of approved leave for outside activities.

(i) Involve use by the employee of official facilities, (e.g., office space, office machines, telephones, supplies) or the services of other employees during duty hours.

(j) Be of such extent or nature as to interfere with the efficient performance of the employee's Government duties, or impair the employee's mental or physical capacity to perform them in an acceptable manner.

(k) Involve use of information obtained as a result of Government employment which is not freely available to the general public in that it either has not been made available to the general public or would not be made available on request. However, written authorization for the use of nonpublic information may be given when the Director of the Field or Component Installation or, at NASA Headquarters, the Associate Administrator for Management, determines that such use would be in the public interest.

§ 1207.303 Distinction between official and nonofficial activities.

(a) In applying the provisions of this subpart, particularly with regard to writing, speaking, or editing activities, NASA employees must distinguish between official and nonofficial activities. Official activities are conducted as part of an employee's NASA duties, whereas nonofficial activities constitute outside employment that must be in compliance with this subpart. In connection with writing, speaking, or editing, an activity will normally be considered official if:

(1) It is the result of a request addressed to NASA to furnish a speaker, author, or editor or of an invitation addressed to an employee of NASA to perform activities which are, in fact, within the employee's official duties, rather than as a private individual;

(2) The activity is performed in conjunction with attendance at a meeting approved under the authority of 5 U.S.C. 4110 (formerly the Government Employees Training Act); or

(3) It involves a single article, speech, or lecture, or participation in a single seminar, symposium, forum, or similar activity, the content of which is devoted substantially to the individual's official duties or personal involvement in NASA's plans or programs, or United States aeronautical or space activities. Conversely, a series of lectures as part of a regularly scheduled course or lecturer program at an educational institution, regardless of the subject matter, is regarded as nonofficial and therefore is an outside activity. The fact that an activity is prepared for or is performed outside of duty hours is not determinative of whether it is official or nonofficial; however, official time and facilities shall not be used for nonofficial outside activities.

§ 1207.304 Compensation, honoraria, travel expenses.

(a) An employee may accept compensation or an honorarium for permissible outside employment or other outside activity which is nonofficial in character unless otherwise prohibited by this part. Under no circumstances may an honorarium be accepted for official activities. If an honorarium is offered for official activities of the employee, the employee should advise the donor that he/she cannnot legally accept it. If the donor insists, it should be explained that the honorarium will be accepted on behalf of NASA as an unconditional and voluntary gift in accordance with NMI 1210.1.

(b)(1) Except as provided in § 1207.202(d)(11), and in paragraph (b)(2) of this section, travel expenses will generally be borne by the Government when official activities of NASA employees are involved, including attendance at meetings of nongovernmental organizations although appropriate reimbursable agreements are permitted. Conversely, when nonofficial outside employment activities are involved, appropriated funds will not be utilized for travel or subsistence.

(2) In the course of official activities, contributions and awards incident to training in nongovernment facilities, and travel, subsistence, and other expenses incident to attendance at meetings may be accepted by NASA employees, provided that such contributions, awards, and payments are made by nonprofit organizations in connection with training under 5 U.S.C. 4111 (formerly the Government Employees Training Act) and that the employee has obtained specific written authorization from the Associate Administrator for Management or the Director of the Field or Component Installation to accept the contribution or award.

(3) No employee shall accept any honorarium of more than $2,000 (excluding amounts accepted for actual travel and subsistence expenses for such person and spouse or aide, and excluding amounts paid or incurred for agents' fees or commissions) for any appearance, speech, or article. The provisions of this paragraph apply whether the appearance, speech, or article is outside employment approved under this subpart, or pertains to the private interests of the employee.

§ 1207.305 Special conditions applicable to writing and editing.

(a) Subject to the limitations set forth in § 1207.302, NASA employees may serve as editors, as editorial consultants, or on editorial boards, and may contribute articles to publications issued by nonprofit organizations or by profit organizations involved in trade or news press publishing. Editing activities for profit organizations should be carefully appraised. Under no circumstances should the activity involve approval or disapproval of advertising.

(b) Writing and editing, with or without pay, which pertain to the private interests of employees regarding hobbies, sports, or cultural activities are permitted unless there are actual or apparent conflicts with their officially assigned duties.

§ 1207.306 Administrative approval.

(a) Aside from avoiding prohibited outside employment or other outside activity, each employee must also obtain administrative approval in accordance with paragraph (b) of this section before engaging in outside employment or other outside activity, with or without compensation, of the following types:

(1) Writing or editing except those activities set out in § 1207.305(b).

(2) Teaching and lecturing except as it relates to the private interests of employees regarding hobbies, sports, or cultural activities.

(3) Regular self-employment.

(4) Consulting services.

(5) Holding state or local public office.

(6) Outside employment or other outside activity involving a NASA contractor, subcontractor, or grantee.

(7) Membership on a committee, board, or other such body of a profit making organization.

(8) Engaging in outside activity which involves the practice of a NASA-owned invention, provided that necessary licenses are obtained from the Government, and provided that the employee is not responsible in his/her official capacity for further development, test, or study of that invention or similar NASA-owned inventions or any promotion of that invention or similar NASA-owned inventions on behalf of the Government.

(9) Any other outside work concerning the property of which an employee is uncertain.

Prior adminstrative approval may be required, on a case-by-case basis, by the supervisor or the Designated Agency Ethics Official for additional types of outside employment where, because of special considerations, such a requirement is considered desirable for the protection of employees or NASA.

(b) Procedures for permission to engage in outside employment or other outside activity.

(1) *Form and content of request.* A request for administrative approval of outside employment or other outside activity shall be in writing and show:

(i) Employee's name and occupational title.

(ii) Nature of the activity: Full description of specific duties or services to be performed and time period involved.

(iii) Name and address of person and/or organization for which work will be done. In the case of self-employment in a professional capacity serving a large number of individuals, instead of listing each client, the employee will indicate the type of services to be rendered and an estimate of the total number of clients anticipated during the next 6 months. Specific notification of the identity of any client known to have business with NASA should be given prior to the performance of the service.

(iv) Estimated total time that will be devoted to the activity. If on a continuing basis, the estimated time per year; if not, the anticipated ending date.

(v) Whether service can be performed entirely outside of usual duty hours; and if not, the estimated number of hours of absence from work that will be required.

(vi) The amount of remuneration and/or expenses, if any, to be received.

(vii) A statement that the employee has no official involvement with the outside employer and will disqualify himself/herself in any matters that could directly affect the outside employer in performance of the employee's NASA duties.

(2) *Routing.* The request for approval will be submitted in duplicate through the supervisor to the appropriate Official-in-Charge of a Headquarters Office or to the Director of the Field or Component Installation or to the person designated to act for them, as appropriate. While the exact approval procedure to be used is left to the discretion of the installation, prior to action on a request for approval, the request shall be reviewed by a Deputy Ethics Counselor. In the case of key officials as defined in § 1207.102(a), requests for approval shall be submitted to the appropriate Official-in-Charge of the Headquarters Office or the Director of the Field or Component Installation, who will add a recommendation and will forward the request through the General Counsel to the Associate Administrator for Management for a determination. Employees will be notified in writing of the actions taken on their requests. All approved requests will be maintained in the local Personnel Office.

(3) *Keeping record up to date.* If there is a significant change in the nature or scope of the duties or services performed either in the employee's NASA position or the outside position, or in the nature of the outside employer's business, the employee will submit a revised request for approval promptly. If the outside work is discontinued sooner than anticipated (not merely suspended temporarily), the employee will so notify the officer who approved the request.

(4) *Enforcement.* Failure to obtain written administrative approval for outside employment or other outside activity for which approval is required, may be ground for disciplinary action.

Subpart D—Financial Interests and Investments

§ 1207.400 Scope of subpart.

This subpart prescribes policies and procedures for the avoidance of conflicting financial interests in connection with an employee's Government position or in discharge of his or her official responsibilities and sets out the requirements for reporting financial interests and outside employment. It implements the requirement of Title II of the Ethics in Government Act of 1978 that certain employees file public financial disclosure reports, as well as implementing regulations of the Office of Government Ethics (5 CFR Parts 734 and 735) and sets forth the requirement for confidential financial and employment reports pursuant to Executive Orders 11222 and 12565.

§ 1207.401 General.

(a) Employees are subject to two types of controls in connection with apparent or actual conflicting financial interests. One is a criminal statute, 18 U.S.C. 208, which by its terms prohibits an employee's participation in certain official activities where the employee has a conflicting personal financial interest. The Office of Government Ethics regulation (5 CFR 735.204) prohibits the holding by an employee of a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with official duties. This regulation also prohibits direct or indirect participation by an employee in a financial transaction as a result of, or primarily relying on information obtained through Government employment. The other type of control is a financial disclosure requirement. The Ethics in Government Act of 1978 requires certain officers and employees to file public financial disclosure reports (the Executive Personnel Report). This requirement is explained in detail in § 1207.404. In addition, under Executive Order 11222 and Office of Government Ethics regulations, another group of employees occupying certain Government positions must report all personal financial interests and outside employment by filing a confidential statement of employment and financial interest. An employee will not be required to file both of these forms. The confidential disclosure requirement is explained in detail in § 1207.405. These requirements have the common objective of deterring the occurrence of conflicting financial interest situations, one by sanctions and the other by disclosure. While the statute prohibits and prescribes punishment, the statement of employment and financial interests is intended to help the employee and those who review the employee's statement to avoid conflicts through advice and counseling.

(b) The public disclosure report (Standard Form 278) and the confidential statement of employment and financial interests (NASA Form 1270) required under this subpart are in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, order, or regulation. The submission of a statement by an employee does not permit the employee or any other person to participate in a matter in which the employee's or the other person's participation is prohibited by law, order, or regulation, unless the employee obtains a waiver under procedures set out in this subpart.

(c) Notwithstanding the requirement under this subpart for filing a statement of employment and financial interests, an employee shall avoid acquiring a financial interest that could result, or taking an action that would result, in a violation of 18 U.S.C. 208(a) or of this part. See discussion in subpart (a) of 5 CFR 735.204.

§ 1207.402 Statutory prohibitions against acts affecting a personal financial interest.

(a) The provisions of 18 U.S.C. 208(a) prohibit any employee from participating personally and substantially in the course of the employee's Government duties in any judicial or other proceeding, application, request for a ruling, or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in relation to which matter, to the employee's knowledge, the following persons or organizations have a financial interest:

(1) The employee, or the employee's spouse, minor child, or partners;

(2) A business or nonprofit organization in which the employee is serving as an officer, director, trustee, partner, or employee; or

(3) A person or business or nonprofit organization with whom or with which the employee is negotiating, or has any arrangement with, concerning prospective employment. An employee is deemed to be negotiating when he/she has taken any step beyond that of sending a resume. The employee must disqualify himself/herself from any work involving the entity with which he/she is negotiating. The employee shall immediately send a letter to his/her supervisor and to his/her Chief

Counsel (or to the Associate General Counsel (General) at Headquarters) stating the circumstances of the employee's disqualification.

(b) The prohibitions in paragraph (a) of this section may be waived under certain circumstances which are set out in § 1207.403.

(c) Illustrative of the type of matters in which NASA employees commonly participate and which may fall within the prohibitions described in paragraph (a) of this section are the following:

(1) The negotiation, administration, or auditing of contracts or agreements;

(2) The selection or approval of contractors or known subcontractors under a NASA prime contract;

(3) The technical monitoring or direction of work under a contract;

(4) Participation on boards or committees of the type listed in § 1207.405(a)(2); or

(5) Project monitoring.

(d) Unless a waiver is granted pursuant to § 1207.403, no employee will participate personally and substantially in the course of the employee's Government duties in any particular matter of a type listed in paragraph (c) of this section, or in any other matter of a type referred to in paragraph (a) of this section if, to the employee's knowledge, any of the persons or organizations identified in paragraph (a) of this section have a financial interest relating to that particular matter.

§ 1207.403 Waiver of statutory prohibition.

(a) *Specific waiver available.* The prohibition of 18 U.S.C. 208(a) may be waived in connection with a specific matter of the type which comes under the statute if the employee makes a full disclosure in writing of the nature of the matter involved and of the financial interest relating thereto and receives, in advance of participation in such matter, a written determination that such financial interest is not so substantial as to affect the integrity of the employee's services and, therefore, that the employee may participate personally and substantially in that matter. The procedures set forth in paragraph (c) of this section will be followed in connection with granting a waiver as described in this section.

(b) *General waivers.* The prohibition of 18 U.S.C. 208(a) also may be waived by general regulation applicable to all NASA employees so as to permit an employee (including civilian and military personnel of other Government agencies regularly detailed to NASA) to participate personally and substantially in a specific matter, notwithstanding the existence of a financial interest relating to that matter, where it has been determined that such a financial interest is too remote or inconsequential to affect the integrity of the employee's governmental capacity. Such a determination has been made by the Administrator and published in the FEDERAL REGISTER with respect to the following categories of financial interest:

(1) The following exemptions apply to financial interests which are held directly by a NASA employee, or by the employee's spouse or minor child, whether jointly or individually, or by a NASA employee and the employee's partner or partners as joint assets of the partnership:

(i) Ownership of shares of common or preferred stocks, including warrants to purchase such shares, and of corporate bonds or other corporate securities, if the current aggregate market value of the stocks and other securities so owned in any single corporation does not exceed $5,000, and provided such stocks and securities are listed for public trading on a major stock exchange. This exemption extends also to any financial interests that the corporation whose stocks or other securities are so owned may have in other business entities. This exemption shall not apply to membership on boards or committees constituted as part of the NASA Source Evaluation Board (SEB) process unless specific written approval for such membership is obtained from the Designated Agency Ethics Official.

(ii) Ownership of bonds other than corporate bonds, regardless of the value of such interest. This exemption extends also to any financial interests that the organization whose bonds are so owned may have in other business entities.

(iii) Ownership of shares in a widely diversified mutual fund or regulated investment company regardless of the value of such interests. This exemption extends also to any financial interests that the mutual fund or investment company may have in other business entities.

(2) If a NASA employee or the employee's spouse or minor child has a present beneficial interest or a vested remainder interest under a trust, the ownership of stocks, bonds, or other corporate securities under the trust will be exempt to the same extent as provided in paragraph (b)(1)(i) of this section for the direct ownership of such securities. The ownership of bonds other than corporate bonds, or of shares in a mutual fund or regulated investment company, under the trust will be exempt to the same extent as provided under paragraphs (b)(1)(ii) and (b)(1)(iii) of this section, for the direct ownership of such bonds or shares.

(3) If a NASA employee is an officer, director, trustee, or employee of an educational institution, or if the employee is negotiating for, or has an arrangement concerning prospective employment with such an institution, a direct financial interest which the institution has in any matter will not itself be exempt, but any financial interest that the institution may have in the matter through its holdings of securities issued by business entities will be exempt, provided the NASA employee is not serving as a member of the investment committee of the institution or is not otherwise advising it on its investment portfolio.

(4) If a NASA employee has continued to participate in a bona fide pension, retirement, group life, health or accident insurance plan, or other employee welfare or benefit plan that is maintained by a business or nonprofit organization of which the employee is a former employee, the employee's financial interest in that organization will be exempt, except to the extent that the welfare or benefit plan is a profit sharing or stock bonus plan. This exemption extends also to any financial interests that the organization may have in other business activities.

(c) Procedures for specific waiver.

(1) The written request for a waiver will describe the specific matter involved, the nature and extent of the employee's participation therein, and the exact nature and amount of financial interest relating to the specific matter.

(2) Employees who are key officials, or who are appointed under authority of section 203(c)(2)(A) ("NASA Excepted Positions") or section 203(c)(10) ("Alien Scientists") of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473(c)(2)(A) and 2473(c)(10)), or under 5 U.S.C. 3131 et seq. (Senior Executive Service), will forward the request to the Administrator. It shall be submitted through the appropriate Chief Counsel or General Counsel and the appropriate Director of a Field or Component Installation or Official-in-Charge of a Headquarters Office, who will transmit the request to the Administrator with comments and recommendations on the proposed waiver. The determination required by the statute will be made only by the Administrator or Deputy Administrator in the case of these employees.

(3) All other employees will forward their requests for a waiver through the appropriate Chief Counsel or General Counsel to the appropriate Director of a Field or Component Installation or Official-in-Charge of a Headquarters Office. For Headquarters employees, the Associate Administrator for Management is authorized to make the determination required by the statute. For employees at an installation, the Directors of Field and Component Installations, and their Deputies are authorized to make the determination required by the statute. This authority may not be redelegated.

(4) A copy of waiver granted by the Director of a Field or Component Installation shall be forwarded to the Associate Administrator for Management, NASA Headquarters.

[52 FR 22755, June 16, 1987, as amended at 53 FR 4606, Feb. 17, 1988]

§ 1207.404 Executive personnel financial disclosure report.

(a) *Background.* The Ethics in Government Act of 1978 (Pub. L. 95-521) prescribes a public financial disclosure reporting requirement for certain officers and employees. The requirements and procedures are set forth in detail in the Act as well as in the implementing regulations of the Office of Government Ethics (5 CFR Part 734). This section will not reiterate these detailed requirements nor the instructions for filing that are contained in the Executive Personnel Financial Disclosure Report (SF 278).

(b) *Employees required to file.* The NASA employees required to file the Executive Personnel Financial Disclosure Report (SF 278) are:

(1) Presidential nominees to positions requiring the advice and consent of the Senate.

(2) Officers and employees who have served in their position for 61 days or more during the preceding calendar year whose positions are classified or paid at GS-16 or above of the General Schedule, or whose basic rate of pay under other pay schedules is equal to or greater than the rate for GS-16. This category includes members of the Senior Executive Service.

(3) Officers or employees in any other position determined by the Director of the Office of Government Ethics to be of equal classification to the GS-16.

(4) Administrative law judges.

(5) Employees in the excepted service in positions which are of a confidential or policymaking character unless their positions have been excluded by the Director of the Office of Government Ethics.

(6) The designated agency ethics official.

(c) *Time of filing*—(1) *Initial appointment.* Within 5 days after transmitted by the President to the Senate of the nomination to a position described in paragraph (b)(1) of this section or within 30 days after assuming a position described in paragraphs (b) (2), (3), (4), (5), and (6) of this section, an Executive Personnel Financial Disclosure Report (SF 278) must be filed.

(2) *Incumbents.* An Executive Personnel Financial Disclosure Report must be filed no later than May 15 annually by incumbents of any of the positions listed in paragraph (b) of this section. In certain cases an extension of up to 45 days for filing may be permitted by the Designated Agency Official. The Director of the Office of Government Ethics may grant an additional 45-day extension, for good cause shown.

(3) *Terminations.* No later than 30 days after an incumbent of a position listed in paragraph (b) of this section terminates that position, the inidividual shall file an Executive Personnel Financial Disclosure Report.

(d) *Place of filing.* All reports required to be filed by this subpart by Headquarters employees, Directors, Deputy Directors and Chief Counsels of Field Installations shall be submitted on or before the due date to the Executive Personnel Management and Development Office, Code NPD, NASA Headquarters. Other field installation personnel required to file reports by this subpart shall submit such reports on or before the due date to the Field Installation Director of Personnel.

(e) *Review and retention of reports.* All reports required to be filed with the Executive Personnel Management and Development Office, Code NPD, NASA Headquarters, will be reviewed by the Designated or Alternate Agency Ethics Counselor, Office of the General Counsel. Reports required to be filed by field installation personnel with the Field Installation Director of Personnel, will be reviewed by the Field Installation Chief Counsel. All reports required to be filed by this subpart will be sent, after review, to the Executive Personnel Management and Development Office, Code NPD, NASA Headquarters, for retention. The reports will be available to the public.

(f) *Where to seek help.* To seek assistance in completing the Executive Personnel Financial Disclosure Report, contact the Chief Counsel at a Field Installation, or the Associate General Counsel (General) at Headquarters.

(g) *Failure to submit report.* Falsification of, or knowing or willful failure to file or report information required to be reported by section 202 of the Act may subject the individual to a civil penalty and to disciplinary action. Also, knowing or willful falsification of information under that section may subject the individual to criminal prosecution under 18 U.S.C. 1001, leading to a fine of not more than $10,000, or imprisonment for not more than 5 years, or both.

§ 1207.405 Confidential statements of employment and financial interests.

(a) The following criteria define the categories of types of employees, unless otherwise exempted pursuant to paragraph (b) of this section, who will file a Confidential Statement of Employment and Financial Interests, containing the kind of information described in detailed instructions on NASA Form 1270:

(1) Employees classified at the GM-13 or GS-13 level and above under 5 U.S.C. 5332, or at comparable pay levels under other authority, whose duties and responsibilities require the exercise of judgment in making a government decision or making government action in regard to:

(i) Contracting or procurement, including the evaluation or selection of contractors; the negotiation, approval, or award of contracts; the oversight of activities performed by contractors, including the administration, monitoring, audit, and inspection of contractors and contract activities; and the initiation or approval of requests to procure supplies, equipment, or services, other than those common items available from NASA or GSA inventories;

(ii) Administering or monitoring grants or subsidies or Space Act Agreements, including those with educational institutions and other non-Federal organizations;

(iii) Auditing financial transactions;

(iv) Using or disposing of excess or surplus property; or

(v) Establishing or enforcing safety standards and procedures.

(2) All employees, regardless of grade, serving as members, evaluators or advisers to the following Boards or Committees:

(i) Source Evaluation Boards or Committees;

(ii) Inventions and Contributions Boards;

(iii) Contract Adjustment Board;

(iv) Board of Contract Appeals;

(v) Site Selection Boards;

(vi) Performance Evaluation Boards or Committees administering the award fee of a contract.

(3) Employees classified at the GM-13 or GS-13 level and above under 5 U.S.C. 5332, or at comparable pay levels under other authority, and who are identified at Headquarters by the Director, Headquarters Human Resources Management, or by the Director of Personnel at a Field or Component Installation as holding positions requiring the incumbent thereof to exercise judgment in making Government decisions or taking actions where such decisions or actions may have an economic impact on the interest of any non-Federal enterprise.

(4) Employees classified below the GM-13 or GS-13 level under 5 U.S.C. 5332 who are appointed as Contracting Officers.

(5) Employees classified below the GM-13 or GS-13 level under 5 U.S.C. 5332, or at a comparable pay level under other authority, and who are in positions which otherwise meet the criteria of § 1207.405(a)(1) or § 1207.405(a)(3), when designated in writing by the Designated Ethics Official, after such designation has been justified in accordance with 5 CFR 735.403(d).

(b)(1) An employee required to file an Executive Personnel Financial Disclosure Report may elect to file a current copy of his/her Standard Form 278 in lieu of the report required under this section.

(2) An employee described in paragraph (a)(1) of this section may be exempted from the requirement for filing a statement of employment and financial interests when, at Headquarters, the Director, Headquarters Human Resources Management, or the Director of Personnel at the Field or Component Installation involved determines that the employee's duties are of such a nature, or are at such a level of responsibility and are subject to such a degree of supervision and review, that the possibility of the employee's becoming involved in a conflict of interest is remote.

(c) *Procedures for filing statements*—(1) *Time and place.* Each employee required to file a statement under this section will submit a completed NASA

Form 1270 to the local Personnel Officer or other designated official as follows:

(i) Thirty days after entrance on duty;

(ii) Ten days after the employee's position is specifically identified as one requiring the incumbent thereof to file a financial statement;

(iii) After selection and before service on the boards or committees listed in § 1207.405(a)(2).

(2) *Annual statements.* A statement shall be submitted by incumbents each year reflecting reportable interests held as of June 30. The statement must be filed during the month of July each year. No supplementary statement will be accepted for this annual filing.

(3) For purposes of this reporting requirement, the financial interest, including employment, of a spouse, minor child, or other members of an employee's immediate household is considered to be an interest of the employee and must be reported. "Members of an employee's immediate household" means those relations who are residents of the employee's household.

(4) If any information required to be included on a statement of employment and financial interests, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that the other person submit the information on his/her behalf. If the employee concerned should gain knowledge about such interests, he/she should report the information in order to prevent the possibility of invoking 18 U.S.C. 208.

(d) The following procedures will be followed with regard to the maintenance of Confidential Statements of Employment and Financial Interests. Each Field or Component Installation Personnel Director and, at Headquarters, the Director, Headquarters Human Resources Management, will maintain, on a current basis, a master list of employees required to file statements under this section. It will be these officials' responsibility to determine that the list includes all those employees falling within the criteria for reporting set forth in this section and that the requirement for filing statements is fully carried out on a timely basis. In the event of any question regarding the interpretation of these criteria, the official will consult the Deputy Ethics Counselor or the Designated Agency Ethics Official directly.

(e) An employee who fails or refuses to file a statement as required by this section, or who knowingly falsifies information in the statement, will be subject to appropriate disciplinary action.

(f) Employee statements filed under this section comprise a NASA System of Records under the Privacy Act of 1974, and will be protected accordingly. The file is NASA 10SCCF, "Standards of Conduct Counseling Case Files—NASA."

(g) This section does not require an employee to include in a statement of employment and financial interests any information relating to the employee's connection with, or interests in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization not conducted as a business enterprise. For the purpose of this section, educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed "business enterprises" and are required to be included in an employee's financial interest statement.

(h) Information concerning financial interests which have been exempted from the prohibition of 18 U.S.C. 208(a), as set forth in § 1207.403(b), may be omitted from the statement of employment and financial interests, except that, notwithstanding the exemption set forth in § 1207.403(b)(1)(ii), the ownership of securities in any amount in a company doing business with NASA will be disclosed if the employee's duties and responsibilities require the exercise of judgment in making a Government decision, taking Government action in relation to that company, or serving on boards or committees constituted as part of the NASA SEB process. In such case, the employee should note if his or her interest is under or over $5,000.

[52 FR 22755, June 16, 1987, as amended at 53 FR 4606, Feb. 17, 1988; 53 FR 5765, Feb. 26, 1988]

Subpart E—[Reserved]

Subpart F—Standards of Conduct for Special Government Employees [Reserved]

Subpart G—Administrative Enforcement Procedures for Alleged Violations of 18 U.S.C. 207

SOURCE: 54 FR 4003, Jan. 27, 1989, unless otherwise noted.

§ 1207.700 Scope of subpart.

The subpart establishes NASA's administrative enforcement procedures for handling allegations of violations of 18 U.S.C. 207, the Federal criminal prohibition against post-employment conflicts of interest by former Government employees. It implements 18 U.S.C. 207(j) which requires each agency to establish such procedures and the guidelines of the Office of Government Ethics (OGE) which appear at 5 CFR 737.27.

§ 1207.701 Policy.

Any allegation that a former NASA employee has violated 18 U.S.C. 207 will be thoroughly and impartially investigated following the guidelines of the OGE and the procedural requirements of this subpart before a final decision is reached.

§ 1207.702 Procedures for administrative disciplinary hearing.

(a) *Allegations of violations.* Any allegation that a former NASA employee has violated 18 U.S.C. 207 in connection with duties performed while the individual worked for NASA shall be referred to the NASA Inspector General for investigation. The Inspector General shall coordinate, as appropriate, with the Director of the OGE and the Criminal Division of the Department of Justice.

(b) *Initiation of hearing.* When the NASA Inspector General determines after appropriate review that there is reasonable cause to believe that a former NASA employee has violated 18 U.S.C. 207(a), (b), or (c), or any implementing regulations, the Inspector General shall prepare and issue the notice to the former employee required by 18 U.S.C. 207(j) which shall include:

(1) A statement of allegations (and the basis thereof) sufficiently detailed to enable the former Government employee to prepare an adequate defense;

(2) Notification of the right to a hearing; and

(3) An explanation of the method by which a hearing may be requested.

(c) *Appointment of examiner.* The Associate Deputy Administrator shall appoint an examiner upon issuance of a notice under paragraph (b) of this section. Any duly appointed examiner is hereby delegated authority to conduct an administrative hearing and to make an initial decision under the procedures of this subpart. The examiner shall be impartial and shall not have participated in any manner in the circumstances giving rise to the proceedings or the decision to initiate the proceedings. The examiner shall have a degree in law, be admitted to the bar, and be experienced in the conduct of administrative hearings.

(d) *Time, date, and place of hearing.* Upon a request for a hearing by the former employee, the examiner shall schedule a hearing as promptly as possible, with due regard for the former employee's need for adequate time to prepare a defense and expeditious resolution of potentially damaging allegations. The examiner shall observe the procedural requirements of 18 U.S.C. 207 and this subpart in conducting the hearing.

(e) *Rights of the former employee.* In connection with a hearing, the former employee shall have the right:

(1) To represent oneself or to be represented by counsel;

(2) To introduce and examine witnesses and to submit evidence;

(3) To confront and cross-examine witnesses;

(4) To present argument;

(5) To request a transcript or recording of the proceedings.

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(f) *Burden of proof.* The agency shall have the burden of proof and must establish by substantial evidence that a violation has occurred.

(g) *Initial decision.* (1) The examiner shall make an initial determination based exclusively on matters of record in the proceedings.

(2) When a former employee does not elect a hearing, the examiner shall consider all available evidence, including any documentary evidence submitted by the parties, and shall issue an initial decision based thereon.

(3) The written initial decision shall set forth all findings of fact and conclusions of law relevant to the matter at issue.

§ 1207.703 Appeal from initial decision.

Within 30 days after the date of the initial decision, either party may appeal the initial decision to the Associate Deputy Administrator. The Associate Deputy Administrator will review the pertinent record of the proceedings and any written arguments submitted by the parties concerning the appeal. If the Associate Deputy Administrator modifies or reverses the initial decision, he or she shall specify the findings of fact and conclusions of law that are different than those of the examiner.

§ 1207.704 Administrative sanctions.

(a) The final agency decision shall be:

(1) The decision of the Associate Deputy Administrator on an appeal under § 1207.703; or

(2) The decision of the examiner which shall become final if no appeal is taken within the 30-day time limit.

(b) If the final decision of the agency is that a violation of 18 U.S.C. 207 (a), (b), or (c), or of implementing regulations has occurred, the following sanctions may be ordered by the Administrator against the former employee:

(1) Prohibiting the individual from making, on behalf of any other person (except the United States), any formal or informal appearance before, or, with the intent to influence, any oral or written communication to, NASA on any matter of business for a period not to exceed 5 years, which may be accomplished by directing NASA employees to refuse to participate in any such appearance or to accept any such communication; or

(2) Taking other appropriate disciplinary action.

(c) Any person found to have participated in a violation of 18 U.S.C. 207 (a), (b), or (c) or implementing regulations under the procedures of this subpart may seek judicial review of the administrative determination and shall be notified of the opportunity of such review in the final decision of the agency.

Subpart H—Post-Employment Regulations

SOURCE: 54 FR 4003, Jan. 27, 1989; 55 FR 9250, Mar. 12, 1990, unless otherwise noted.

§ 1207.800 Scope of subpart.

This subpart provides guidance to former NASA government employees who are subject to the restrictions of Title V of the Ethics of Government Act of 1978, as amended, and who want to communicate scientific or technical information to NASA.

§ 1207.801 Exemption for scientific and technological communications.

(a) Whenever a former government employee who is subject to the constraints of post-employment conflict of interest, 18 U.S.C. 207, wishes to communicate with NASA under the exemption in section 207(f) for the making of a communication solely for the purpose of furnishing scientific or technological information, he or she shall state to the NASA employee contracted, the following information:

(1) That he or she is a former government employee subject to the post employment restrictions of 18 U.S.C. 207 (a), (b), or (c)—specify which;

(2) That he or she worked on certain NASA programs—enumerate which; and

(3) That the communication is solely for the purpose of furnishing scientific or technological information.

(b) If the former government employee has questions as to whether the communication comes within the scientific and technological exemption,

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he or she should contact the General Counsel, the designated agency ethics official.

PART 1208—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

Authority: Sec. 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, 84 Stat. 1894 (42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100-17, 101 Stat. 246-256 (42 U.S.C. 4601 note).

Editorial Note: For additional information, see related documents published at 50 FR 8953, March 5, 1985, 52 FR 18768, May 19, 1987, and 52 FR 45667, December 1, 1987.

§ 1208.1 Uniform Relocation Assistance and Real Property Acquisition.

Regulations and procedures for complying with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646, 84 Stat. 1894, 42 U.S.C. 4601), as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Title IV of Pub. L. 100-17, 101 Stat. 246-255, 42 U.S.C. 4601 note) are set forth in 24 CFR Part 24.

[52 FR 48017, Dec. 17, 1987 and 54 FR 8912, Mar. 2, 1989]

PART 1209—BOARDS AND COMMITTEES

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Subpart 1—Board of Contract Appeals

Authority: Sec. 203, 72 Stat. 429, 42 U.S.C. 2473.

Source: 45 FR 1006, Jan. 4, 1980, unless otherwise noted.

§ 1209.100 Scope.

This subpart establishes the NASA Board of Contract Appeals in accordance with the Contract Disputes Act of 1978 (Pub. L. 95-563) and prescribes its authority, duties, and membership.

§ 1209.101 Establishment.

The NASA Board of Contract Appeals was established by NASA Management Manual Instruction 2-4-1, June 25, 1959, and was subsequently continued in effect by NASA Management Instruction 1152.1A, April 1, 1968, NASA Management Instruction 1152.1B, October 28, 1970, and NASA Management Instruction 1152.1C, April 24, 1974. The Board is continued in effect by this subpart.

§ 1209.102 Authority and duties of the Board.

(a) The Board, located at NASA Headquarters, Washington, D.C., shall have jurisdiction to decide any appeal from a decision of a contracting officer (1) relating to a contract made by NASA and (2) relating to a contract made by any other agency when such agency or the Administrator for Federal Procurement Policy has designated the NASA Board to decide the appeal. In exercising this jurisdiction, the Board is authorized to grant any relief that would be available to a litigant asserting a contract claim in the Court of Claims.

(b) The Board shall continue to act for and exercise the full authority of the Administrator in hearing and deciding all appeals in which, by the terms of a contract executed prior to March 1, 1979, the contractor may appeal to the Administrator from decisions of the contracting officer.

(c) There shall be no administrative appeal from decisions rendered by the Board. Either party to the dispute may appeal a decision of the Board under paragraph (a) of this section to the Court of Claims, as provided in section 10 of the Contract Disputes Act.

(d) The Board shall have all customary powers necessary for the performance of its duties including, but not limited to, the authority to issue rules of procedure, to conduct hearings, dismiss appeals or other proceedings, call witnesses, order the production of documents or other evidence, take official notice of facts within general knowledge, and decide all questions of fact or law raised by the appeal.

(e) A member of the Board may administer oaths to witnesses, authorize depositions and discovery proceedings, and require by subpoena the attendance of witnesses, and production of books and papers, for the taking of testimony or evidence by deposition or in the hearing of an appeal.

(f) The member of membe[illegible] the Board assigned to hear an app[illegible] shall have authority to conduct pre[illegible]ing conferences, hold hearings, examine witnesses, receive evidence an[illegible] argument, and report the evidence [illegible] argument to a designated panel [illegible] the Board. A single member of a panel may be assigned to hear and decide motions which are not dispositive of the appeal.

(g) An appeal shall normally be adjudicated by a panel of two or more members. If a panel of two members is unable to agree upon a decision, the Chairperson may assign a third member to consider the appeal.

§ 1209.103 Membership.

(a) The Board shall consist of at least three members appointed by the Administrator, one of whom shall be designated as Chairperson. A Vice-Chairperson may also be designated from the appointed members. Members may perform other duties, not inconsistent with their primary duty, as assigned by the Administrator. The Board is responsible directly to the Administrator.

(b) Members of the Board are hereby designated Administrative Judges.

(c) Members must be qualified in accordance with the provisions of section 8(b)(1) of the Contract Disputes Act of 1978.

(d) Additional members, qualified in accordance with paragraph (c) of this section, and currently serving on other agency boards, may be designated by the Administrator to serve on the Board on an ad hoc basis for the adjudication of particular appeals.

(e) No member of the Board shall consider an appeal if the member has participated in any aspect of the award or administration of a contract in dispute.

§ 1209.104 Responsibilities of the chairperson.

The Chairperson of the Board of Contract Appeals shall be responsible for:

(a) The administration of the Board;

(b) The assignment of a member or members of the Board to act for the Board in each appeal and the assignment of the panel of Board members to decide each appeal;

(c) The receipt and custody of all papers and material relating to contract appeals; and

(d) The designation of an acting Chairperson during the Chairperson's absence, disqualification, or disability, who is empowered to exercise the powers of the Chairperson, provided a Vice-Chairperson has not been formally designated;

(e) The submission of a report, not less often than annually, to the Administrator on the status of the Board's activities.

Subpart 2—[Reserved]

Subpart 3—Contract Adjustment Board

AUTHORITY: Pub. L. 85-804 and 42 U.S.C. 2473(c)(1).

SOURCE: 51 FR 28924, Aug. 13, 1986, unless otherwise noted.

§ 1209.300 Scope.

This subpart continues in effect the Contract Adjustment Board (hereinafter referred to as "the Board") to consider and dispose of requests for extraordinary contractual adjustments by contractors of the National Aeronautics and Space Administration (hereinafter referred to as NASA).

§ 1209.301 Authority.

(a) The Act of August 28, 1958 (50 U.S.C. 1431-35) (hereinafter referred to as "the Act"), empowers the President to authorize departments and agencies exercising functions in connection with the national defense to enter into contracts or into amendments or modifications of contracts and to make advance payments, without regard to other provisions of law relating to the making, performance, amendment, or modification of contracts, whenever the President deems that such action would facilitate the national defense.

(b) Executive Order No. 10789, dated November 14, 1958 (23 FR 8897), authorizes the Administrator, NASA, to exercise the authority conferred by the Act and to prescribe regulations for the carrying out of such authority.

(c) Federal Acquisition Regulation (FAR), Part 50, April 1, 1985, and NASA/FAR Supplement 84-2, Part 18-50, October 19, 1984, establishes standards and procedures for the disposition of requests for extraordinary contractual adjustments by NASA contractors.

§ 1209.302 Establishment of Board.

The Board was established on May 15, 1961, and is continued in effect by NASA Management Instruction (NMI) 1152.5 and this regulation.

§ 1209.303 Functions of Board.

(a) The Board is authorized to act for and exercise the authority of the Administrator in cases involving request by NASA contractors for extraordinary contractual adjustments under the Act. Such authority will be exercised in accordance with the standards and procedures established by the Administrator, subject to such limitations as the Administrator may prescribe.

(b) The Board shall have the power to approve, authorize or direct any action, including the modification or release of any obligations, and to make determinations and findings which are necessary or appropriate for the conduct of its functions, and may adopt such rules of procedure as it considers desirable.

(c) The concurring vote of a majority of the total Board membership shall constitute an action of the Board. Decisions of the Board shall be final but the Board may reconsider and modify, correct or reverse any Board decision previously made.

§ 1209.304 Membership.

The Board will consist of a chairperson and four other members, all of whom shall be appointed by the Administrator.

§ 1209.305 Legal advice and assistance.

The General Counsel of NASA shall provide the Board with all necessary advice and assistance.

Subpart 4—Inventions and Contributions Board

AUTHORITY: 42 U.S.C. 2457(f) and 2458.

SOURCE: 51 FR 3945, Jan. 31, 1986, unless otherwise noted.

§ 1209.400 Scope.

This subpart describes the functions, authority, and membership of the NASA Inventions and Contributions Board (hereafter referred to as "the Board").

§ 1209.401 Establishment.

Pursuant to the authority of the National Aeronautics and Space Act of 1958 as amended (42 U.S.C. 2457(f) and 2458) and the Government Employees Incentive Awards Act of 1954 (5 U.S.C. 4501-6), the Board was established on December 4, 1958, and is further continued in effect by this Subpart 4.

§ 1209.402 Responsibilities.

(a) *Waiver of rights in inventions.* Under the authority of 42 U.S.C. 2457(f) and pursuant to 14 CFR Part 1245 Subpart 1 (NASA Management Instruction 5109.2), the Board will receive and evaluate petitions for waiver of rights of the United States to inventions, accord each interested party an opportunity for a hearing, and transmit to the Administrator its findings of fact as to such petitions and its recommendations for action to be taken with respect thereto.

(b) *Patent licenses.* Under the authority of 35 U.S.C. 207(b) and pursuant to 14 CFR Part 1245 Subpart 2 (NASA Management Instruction 5109.3), the Board will accord a licensee or applicant for license an opportunity for a hearing with respect to an appeal which raises a dispute over material facts and will be responsible for making findings of fact and forwarding them to the Administrator or designee.

(c) *Monetary awards for scientific and technical contributions.* (1) Under the authority of 42 U.S.C. 2458 and pursuant to 14 CFR Part 1240 (NASA Management Instructions 5700.1 and 5700.3), the Board will receive and evaluate each application for award for any scientific or technical contribution to the Administration which is determined to have significant value in the conduct of aeronautical and space activities, will accord each applicant an opportunity for a hearing upon such application, and will then transmit to the Administrator its recommendation as to the amount of the monetary award and terms of the award, if any, to be made for such contribution.

(2) If the contribution is made by a Government employee, the Board is also authorized to consider such contribution for award under the incentive awards program and to make an award, if any, on its own cognizance, up to the amount of $10,000 in accordance with NASA supplements to Chapter 451 of the Federal Personnel Manual covering this subject.

§ 1209.403 Organizational location.

The Board is established within the Office of Management.

§ 1209.404 Membership.

(a) The Board will consist of a full-time Chairperson and at least six members appointed by the Administrator from within NASA. One of the members will be designated by the Chairperson as Vice-Chairperson. The Chairperson is responsible directly to the Administrator.

(b) The Chairperson of the Board is appointed for an unlimited period. All other Board members normally will be appointed initially for a period of 3 years. The Chairperson is authorized to extend the initial appointment of any Board member for an additional period of service. If a member resigns or is otherwise unable to participate in the Board's activities, a replacement may be appointed for the remainder of the uncompleted term and, with the approval of the Chairperson, may be appointed for a full 3-year term upon the expiration of the original term. This procedure will provide the Board with a continual infusion of new members with a variety of professional backgrounds and interests. Duties performed by the members of the Board will be in addition to their regular duties.

(c) The Chairperson is authorized to:

(1) Assemble the Board as required to discharge the duties and responsibilities of the Board;

(2) Establish such panels as may be considered necessary to discharge the responsibilities and perform the functions of the Board; and

(3) Issue implementing rules and procedures, and take such other actions as are necessary to perform the Board's functions.

§ 1209.405 Supporting services.

(a) The staff of the Board is established to assist the Board in discharging its functions and responsibilities. The staff will:

(1) Prepare analyses of petitions for waiver of rights to inventions for the consideration of the Board,

(2) Prepare evaluation of proposed awards;

(3) Document Board actions; and

(4) Perform such other functions as may be required.

(b) A full-time director of the staff will serve as a nonvoting member of the Board, and will direct the activities of the staff of the Board.

(c) The director of the staff of the Board will report to the Chairperson of the Board.

PART 1210—DEVELOPMENT WORK FOR INDUSTRY IN NASA WIND TUNNELS

Sec.
1210.1 Introduction.
1210.2 General classes of work.
1210.3 Priorities and schedules.
1210.4 Company projects.
1210.5 Government projects.
1210.6 Test preparation and conduct.

AUTHORITY: 50 U.S.C. 511-515, 42 U.S.C. 2473(c) (5) and (6).

SOURCE: 51 FR 34083, Sept. 25, 1986, unless otherwise noted.

§ 1210.1 Introduction.

(a) *Authority.* The regulations, as they apply to the Unitary Wind Tunnel Plan facilities, are promulgated under authority of the Unitary Wind Tunnel Plan Act of 1949, as amended, codified at 50 U.S.C. 511-515. This statute states "The facilities authorized * * * shall be operated and staffed by the National Aeronautics and Space Administration but shall be available primarily industry for testing experimental models in connection with the development of aircraft and missiles. Such tests shall be scheduled and conducted in accordance with industry's requirements, and allocation of laboratory time shall be made in accordance with the public interest, with proper emphasis upon the requirements of each military service and due consideration of civilian needs."

(b) *Unitary wind tunnel plan facilities.* The unitary wind tunnel plan facilities are the Ames Research Center 11- by 11-foot wind tunnel, 9- by 7-foot wind tunnel, and 8- by 7-foot wind tunnel; the Langley Research Center 4- by 4-foot high Mach number test section and the 4- by 4-foot low Mach number test section; and the Lewis Research Center 10- by 10-food wind tunnel. These wind tunnels are operated by NASA for industry, NASA, the Department of Defense, and other Government agency projects.

(c) *National aeronautical facilities.* The national aeronautical facilities include the National Transonic Facility (NTF) at Langley Research Center and the National Full-Scale Aerodynamic Complex, consisting of the 40- by 80-foot and the 80- by 120-foot wind tunnels and related support facilities at Ames Research Center. These facilities are operated by NASA for industry, NASA, the Department of Defense, and other Government agency projects.

(d) *All other wind tunnels.* All other NASA wind tunnels will be used primarily for NASA research. However, all of these wind tunnels may be used for industry work when it is in the public interest either in joint programs with NASA or on a fee basis.

(e) *NASA policy.* All the projects to be performed in any of the NASA wind tunnels must be appropriate to the facility.

§ 1210.2 General classes of work.

(a) *Company projects.* Includes work for industry on:

(1) Projects which are neither under contract nor supported by a letter of intent from a Government agency; and

(2) Company desired tests which are related to a project which is either under contract with or supported by a letter of intent from a Government agency, but are beyond the scope of the tests requested by the Government agency.

(3) A fee will be charged for company projects.

(b) *Government projects.* Includes work for industry on projects which are either under contract with or supported by a letter of intent from a Government agency. The work must be requested by the Government agency. No fee will be charged for Government projects.

(c) *United States/foreign industry consortium projects.* This involves U.S. companies, which have formed a consortium or any other type of association with foreign companies, that desire tests on aerospace projects of joint or foreign interest. An application for work for such a consortium shall disclose the foreign interest in or anticipated foreign benefit from tests to be conducted and shall first be reviewed by the Director, International Affairs Division, for consistency with current U.S. foreign policy and for compatibility with section 102 of the National Aeronautics and Space Act of 1958, as amended, prior to a final decision being reached on the application. A fee will be charged for these consortium projects unless, in these review procedures, it is determined that Government agency cooperative sponsorship warrants a non-fee arrangement.

(d) *Foreign company projects.* Foreign company requests for wind tunnel use that are not related to U.S. Government or U.S. industry interests or programs will generally not be granted and will in no event be granted prior to a review, as required in paragraph (c) of this section, by the Director, International Affairs Division.

§ 1210.3 Priorities and schedules.

(a) *Priorities.* Unitary wind tunnels shall be available primarily to industry for development work. However, allocations of wind tunnel time shall be in accordance with the public interests, with due consideration to the requirements of the military services, civilian needs, and NASA research. Research work shall have priority in all other NASA facilities.

(b) *Schedules.* Schedules showing the allocation of testing time for Government projects and for company projects for unitary wind tunnels and other major wind tunnels will be established by the appropriate center.

§ 1210.4 Company projects.

(a) *Initiation of company projects.* Company projects will be initiated by a letter to the Center Director followed by a conference between company and NASA representatives at the center having responsibility for the facility proposed for the project. The company representatives will be required to explain the technical need for the project and why the NASA facility is required, as well as to define the extent of the test program, model and equipment requirements, and schedule. The center shall maintain a file of all company requests and their disposition. The company will be required to provide a Safety Analysis Report (SAR) describing potential hazards that the company test program, model, and equipment may present to NASA facilities and personnel, and other documentation required by the facility management to assure that safety requirements are met.

(b) *Scheduling of tests.* In scheduling time for company projects, the responsible NASA center will consider the merits of all projects, including government, company, and NASA research work relative to the national interest and priorities specified in § 1210.3. Every reasonable attempt will be made to accommodate technically justifiable projects on as timely a basis as possible.

(c) *Fees for company projects.* The policy on charges for the use of NASA facilities is explained in NASA Management Instruction 9080.1, "Review, Approval, and Imposition of User Charges." The fee imposed for a company project will cover all direct and indirect costs to NASA for the wind tunnel test.

(1) *Occupancy time charge.* (i) The occupancy time will be computed from the start of installation of the test article in the wind tunnel test section through the time that the test article is removed from the test section and the test section is restored to its original condition.

(ii) The occupancy time rate will be determined in accordance with NASA Management Instruction 9080.1.

(2) *Energy/Fuel.* The charge for energy/fuel will be determined from the energy/fuel consumed during the tests and the actual cost to NASA.

(3) *Data reduction.* The cost of data reduction and the data report will include labor, materials, computational costs, and appropriate indirect charges in accordance with NASA Management Instruction 9080.1.

(4) *Cancellation of scheduled wind tunnel time.* Upon determination of a test schedule by the representatives of the company and of NASA, it becomes the responsibility of the company to meet this schedule. A project may be cancelled by the company without charge on 60 days' notice if succeeding projects are ready for testing and can

be moved into the company's previously scheduled time. In the event subsequently scheduled work cannot be scheduled in lieu of the company's work, when cancelled with less than 60 days' notice, the company shall be required to pay the occupancy time charge for the scheduled test period or for the period the facility test section is idle due to the cancellation, whichever results in the smaller charge. Curtailment of a project underway before the end of the scheduled test period may be made by the company. In this event, the company shall be required to pay the occupancy charge for the time used plus the unused scheduled time or for the idle time of the test section, whichever is the smaller.

(5) *High-power requirements.* Unavailability of adequate power or economic considerations may, on occasion, cause delay or cancellation of high-powered test runs. The company shall cooperate with the facility staff in the scheduling of low-powered runs during periods when large blocks of power are unavailable. However, should rescheduling of test runs to accommodate power shortages be impractical, occupancy time charge credits will be made for time lost arising from such shortages. The basis for these credits, which will also be made for delays due to breakdown or malfunction of Government-furnished equipment or instrumentation, or due to other reasons beyond the control of the company, will be determined by each center. For example, the test period allotted for the program may be extended to offset delays in lieu of a refund.

(d) *Test data transmittal.* The basic data for company projects will be transmitted to the requesting company without detailed analysis but with the necessary description of methods and techniques employed to permit proper interpretation of the data.

(e) *Proprietary rights.* In order to protect the trade secrets of companies, NASA will generate one set of final results, which will become the property of the company and be promptly transmitted to the company. If, subsequently, there is need to review the results, it will be the responsibility of the company to provide the NASA center with copies of the resulting data. Upon completion of the review, the data will be returned to the company. Should the company desire to maintain its trade secret rights in the data during the loan period, it should mark the data with a notice stating that the data shall not be used or disclosed other than for review purposes without prior written permission of the company. NASA, in turn, will protect that data covered by the notice which is protected under the law as a trade secret.

(f) *Test preparation and conduct.* See § 1210.6.

§ 1210.5 Government projects.

(a) *Initiation of Government projects.* Government projects shall be initiated through a conference of representatives from the contracted company, the sponsoring Government agency, and the staff of the NASA center having responsibility for the facility proposed for the project. The purpose of the conference will be to establish the technical basis for the project and why the NASA facility is required as well as to define the extent of the test program, model and instrumentation requirements, and schedule. Upon concurrence of the NASA staff, the sponsoring Government agency will submit a letter of request to the Center Director. A Safety Analysis Report (SAR) will be required, describing the potential hazards that the project test program, model, and equipment may present to NASA facilities and personnel, as well as other documentation required by the facility management to assure that safety requirements have been met.

(b) *Scheduling of tests.* In scheduling time for Government projects, the responsible NASA center will consider the merits of all projects, including Government, company, and NASA research work relative to the national interest and priorities specified in § 1210.3. Every reasonable attempt will be made to accommodate technically justifiable projects on a timely basis.

(c) *Test data transmittal.* The basic data for Government projects, without detailed analysis but with the necessary description of methods and techniques employed to permit the proper interpretation of the data, will be transmitted to the company for whom the tests were made and to the sponsoring Government agency. Further disclosure by NASA of the test results will be made only with the prior concurrence of the sponsoring Government agency.

§ 1210.6 Test preparation and conduct.

(a) *Programming by user.* The user will be given the greatest possible freedom within the objectives of the scheduled program to obtain the quality and quantity of information desired, to determine the sequence and number of test runs to be made, and to make modifications to the program arising from the results obtained, subject to requirements of safety, energy conservation, practicability, and the total time assigned.

(b) *Model systems criteria.* Information will be furnished for each facility on the permissible size of model, standard balances, safety margins to be used in the design of models, model mounting details, and other pertinent factors. All model systems criteria required by the facility for safety consideration including the necessary drawings and stress analyses of the articles to be tested will be furnished at a time specified by the facility staff for their use in preparing for the test.

(c) *Instrumentation.* Each facility will provide basic instrumentation suitable for the test range of the respective facility and computing equipment for the reduction of test data. If the basic instrumentation furnished by the facility does not meet these test requirements, the user will provide suitable instrumentation which will be calibrated by the facility staff to ensure accuracy of measurement. This instrumentation will be made available sufficiently in advance of the test date to accomplish the calibration. Serious delays arising from inaccuracies in user supplied instrumentation, if occurring during the scheduled test period, may result in reassignment of the position of the tests on the facility schedule. Detailed specifications and arrangements for special instrumentation will be established by mutual agreement. The user will be required to furnish all information necessary to prepare the data reduction software program at a date specified by the facility staff.

(d) *Test program.* All tests will be conducted under NASA supervision and by NASA personnel or by NASA support service contractor personnel unless approved otherwise by the facility manager. The test program shall be approved by NASA personnel before the test project is accepted. By agreement between the user (company representatives or the requesting agency) and the center staff, changes in the test program may be made within the objectives of the scheduled program if time is available. When tests are not totally conducted by NASA personnel or by NASA support service contractor personnel, the NASA Field Installation Safety Officer shall verify that the user personnel are fully cognizant of facility safety problems and operations. A current SAR on the facility shall be available to the user personnel for review.

(e) *Test data.* The NASA staff will be responsible for obtaining all test data, its reduction to suitable coefficient form, and the accuracy of the final data, but NASA will assume no responsibility for the interpretation of the data by others. Transmittal of the data will be made as soon as the test is completed and the data are deemed releasable by NASA. For company projects, the data will be transmitted as directed by the company. The data for Government projects will be transmitted simultaneously to the sponsoring Government agency and the contractor (if applicable), unless otherwise directed by the sponsoring agency.

(f) *Shops and office space.* During the conduct of user testing, NASA will provide desk space and at least limited use of the shop facilities to the user whose projects are under test.

(g) *User furnished personnel.* User personnel associated with each project will be agreed upon between the user and facility staff prior to the test.

PART 1211—EXTRATERRESTRIAL EXPOSURE

Sec.

1211.100 Scope.
1211.101 Applicability.
1211.102 Definitions.
1211.103 Authority.
1211.104 Policy.
1211.105 Relationship with Departments of Health, Education, and Welfare and Agriculture.
1211.106 Cooperation with States, territories, and possessions.
1211.107 Court or other process.
1211.108 Violations.

AUTHORITY: Secs. 203, 304, 72 Stat. 429, 433; 42 U.S.C. 2455, 2456, 2473; 18 U.S.C. 799; Art. IX, TIAS 6347 (18 UST 2416).

SOURCE: 34 FR 11975, July 16, 1969, unless otherwise noted.

§ 1211.100 Scope.

This part establishes:

(a) NASA policy, responsibility and authority to guard the Earth against any harmful contamination or adverse changes in its environment resulting from personnel, spacecraft and other property returning to the Earth after landing on or coming within the atmospheric envelope of a celestial body; and

(b) Security requirements, restrictions and safeguards that are necessary in the interest of the national security.

§ 1211.101 Applicability.

The provisions of this part apply to all NASA manned and unmanned space missions which land on or come within the atmospheric envelope of a celestial body and return to the Earth.

§ 1211.102 Definitions.

(a) *NASA* and the *Administrator* mean, respectively the National Aeronautics and Space Administration and the Administrator of the National Aeronautics and Space Administration or his authorized representative (see § 1204.509 of this chapter).

(b) *Extraterrestrially exposed* means the state or condition of any person, property, animal or other form of life or matter whatever, who or which has:

(1) Touched directly or come within the atmospheric envelope of any other celestial body; or

(2) Touched directly or been in close proximity to (or been exposed indirectly to) any person, property, animal or other form of life or matter who or which has been extraterrestrially exposed by virtue of paragraph (b)(1) of this section.

For example, if person or thing "A" touches the surface of the Moon, and on "A's" return to the Earth, "B" touches "A" and, subsequently, "C" touches "B," all of these—"A" through "C" inclusive—would be extraterrestrially exposed ("A" and "B" directly; "C" indirectly).

(c) *Quarantine* means the detention, examination and decontamination of any person, property, animal or other form of life or matter whatever that is extraterrestrially exposed, and includes the apprehension or seizure of such person, property, animal or other form of life or matter whatever.

(d) *Quarantine period* means a period of consecutive calendar days as may be established in accordance with § 1211.104(a).

(e) *United States* means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa and any other territory or possession of the United States, and in a territorial sense all places and waters subject to the jurisdiction of the United States.

§ 1211.103 Authority.

(a) Sections 203 and 304 of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2473, 2455 and 2456).

(b) 18 U.S.C. 799.

(c) Article IX, Outer Space Treaty, TIAS 6347 (18 UST 2416).

(d) NASA Management Instructions 1052.90 and 8020.13.

§ 1211.104 Policy.

(a) *Administrative actions.* The Administrator or his designee as authorized by § 1204.509 of this chapter shall in his discretion:

(1) Determine the beginning and duration of a quarantine period with respect to any space mission; the quarantine period as it applies to various life forms will be announced.

(2) Designate in writing quarantine officers to exercise quarantine authority.

(3) Determine that a particular person, property, animal, or other form of life or matter whatever is extraterrestrially exposed and quarantine such person, property, animal, or other form of life or matter whatever. The quarantine may be based only on a determination, with or without the benefit of a hearing, that there is probable cause to believe that such person, property, animal or other form of life or matter whatever is extraterrestrially exposed.

(4) Determine within the United States or within vessels or vehicles of the United States the place, boundaries, and rules of operation of necessary quarantine stations.

(5) Provide for guard services by contract or otherwise, as may be necessary, to maintain security and inviolability of quarantine stations and quarantined persons, property, animals, or other form of life or matter whatever.

(6) Provide for the subsistence, health, and welfare of persons quarantined under the provisions of this part.

(7) Hold such hearings at such times, in such manner and for such purposes as may be desirable or necessary under this part, including hearings for the purpose of creating a record for use in making any determination under this part or for the purpose of reviewing any such determination.

(8) Cooperate with the Department of Health, Education, and Welfare and the Department of Agriculture in accordance with the provisions of § 1211.105.

(9) Take such other actions as may be prudent or necessary and which are consistent with this part.

(b) *Quarantine.* (1) During any period of announced quarantine, the property within the posted perimeter of the Lunar Receiving Laboratory at the Manned Spacecraft Center, Houston, Tex., is designated as the NASA Lunar Receiving Laboratory Quarantine Station.

(2) Other quarantine stations may be established if determined necessary as provided in paragraph (a)(4) of this section.

(3) During any period of announced quarantine, no person shall enter or depart from the limits of any quarantine station without permission of the cognizant NASA quarantine officer. During such period, the posted perimeter of a quarantine station shall be secured by armed guard.

(4) Any person who enters the limits of any quarantine station during the quarantine period shall be deemed to have consented to the quarantine of his person if it is determined that he is or has become extraterrestrially exposed.

(5) At the earliest practicable time, each person who is quarantined by NASA shall be given a reasonable opportunity to communicate by telephone with legal counsel or other persons of his choice.

§ 1211.105 Relationship with Departments of Health, Education, and Welfare and Agriculture.

(a) If either the Department of Health, Education, and Welfare or the Department of Agriculture exercises its authority to quarantine an extraterrestrially exposed person, property, animal, or other form of life or matter whatever, NASA will, except as provided in paragraph (c) of this section, not exercise the authority to quarantine that same person, property, animal, or other form of life or matter whatever. In such cases, NASA will offer to these departments the use of the Lunar Receiving Laboratory Quarantine Station and such other service, equipment, personnel, and facilities as may be necessary to ensure an effective quarantine.

(b) If neither the Department of Health, Education, and Welfare or the Department of Agriculture exercises its quarantine authority. NASA shall exercise the authority to quarantine an extraterrestrially exposed person, property, animal or other form of life or matter whatever. In such cases, NASA will inform these departments of such quarantine action and, in addition, may request the use of such service, equipment, personnel and facilities of other Federal departments and agencies as may be necessary to ensure an effective quarantine.

(c) NASA shall quarantine NASA astronauts and other NASA personnel as determined necessary and all NASA property involved in any space mission.

§ 1211.106 Cooperation with States, territories, and possessions.

Actions taken in accordance with the provisions of this part shall be exercised in cooperation with the applicable authority of any State, territory, possession or any political subdivision thereof.

§ 1211.107 Court or other process.

(a) NASA officers and employees are prohibited from discharging from the limits of a quarantine station any quarantined person, property, animal or other form of life or matter whatever during order or other request, order or demand an announced quarantine period in compliance with a subpoena, show cause of any court or other authority without the prior approval of the General Counsel and the Administrator.

(b) Where approval to discharge a quarantined person, property, animal or other form of life or matter whatever in compliance with such a request, order or demand of any court or other authority is not given, the person to whom it is directed shall, if possible, appear in court or before the other authority and respectfully state his inability to comply, relying for his action upon this § 1211.107.

§ 1211.108 Violations.

Whoever, willfully violates, attempts to violate, or conspires to violate any provision of this part or any regulation or order issued under this part or who enters or departs from the limits of any quarantine station in disregard of the quarantine rules or regulations or without permission of the NASA quarantine officer shall be fined not more than $5,000 or imprisoned not more than 1 year, or both (18 U.S.C. 799).

PART 1212—PROTECTION OF PERSONAL PRIVACY

Subpart 1212.1—Basic Policy

Sec.

1212.100 Scope of part.
1212.101 Definitions.
1212.102 General policy.

Subpart 1212.2—Requirements for Maintaining Systems of Records

1212.200 Publication of annual system notices.
1212.201 System of records of other agencies under NASA's control.
1212.202 Requirements for maintaining systems of records.
1212.203 Requirements for collecting information.
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1212.205 Social security account numbers.
1212.206 Safeguarding information in systems of records.
1212.207 Duplicate copies of records or portions of records.

Subpart 1212.3—Authority and Responsibilities

1212.300 NASA employees.
1212.301 Associate Deputy Administrator.
1212.302 Associate Administrator for Management.
1212.303 Headquarters and field or component installations.
1212.304 System manager.
1212.305 Assistant Administrator for Procurement.
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AUTHORITY: The National Aeronautics and Space Act of 1958, as amended, 72 Stat. 429, 42 U.S.C. 2473; The Privacy Act of 1974, 88 Stat. 1896, 5 U.S.C. 552a.

SOURCE: 44 FR 54994, Sept. 24, 1979, unless otherwise noted.

Subpart 1212.1—Basic Policy

§ 1212.100 Scope of part.

This Part 1212 implements the Privacy Act of 1974, as amended (5 U.S.C. 552a; referred to as *the Privacy Act*), and establishes the policies, responsibilities, and procedures for the collection, maintenance, use and dissemination by the National Aeronautics and Space Administration (NASA) of personal information contained in a NASA system of records. This part also establishes procedures for a subject individual to have access to and request correction of information in a record. This part applies to systems of records located at or under the cognizance of NASA Headquarters, NASA Field Installations, and NASA Component Installations, as defined in Part 1201.

§ 1212.101 Definitions.

For the purposes of this part, the following definitions shall apply in addition to definitions contained in the Privacy Act:

(a) The term *record* means any item, collection, or grouping of information about an individual including, but not limited to, education, financial transactions, medical history, and criminal or employment history, and that contains a name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph. With the exception of photographs, identifiers alone do not constitute a record.

(b) The term *system or records* means a group of any records from which information is retrieved by the name of the indivudual or by some identifying number, symbol or other identifying particular assigned to the individual.

(c) The term *system manager* means the NASA official who is responsible for a system of records as designated in the system notice of that system of records published in the FEDERAL REGISTER. When a system of records includes portions located at more than one NASA installation, the term *system manager* includes any subsystem manager designated in the system notice as being responsible for that portion of the system of records located at the respective installation.

(d) The term *routine use* means, with respect to the disclosure of a record, the use of the record for a purpose which is compatible with the purpose for which it was collected. Disclosure of a record to those officers and employees of NASA who have a need for the record in the performance of their duties shall not be regarded as a *routine use*.

(e) The term *NASA employee* or *NASA official*, particularly for the purpose of § 1212.400(b)(1) relating to the disclosure of a record to those who have a need for the record in the performance of their duties, includes employees of a NASA contractor which operates or maintains a NASA system of records for or on behalf of NASA.

(f) The term *NASA information center* refers to information centers established to facilitate public access to NASA records under Part 1206. See § 1206.401 for the address of each NASA information center.

§ 1212.102 General policy.

In compliance with the Privacy Act and in accordance with the requirements and procedures of this part, NASA has an obligation to:

(a) Permit an individual to determine whether there are records pertaining to the individual in a system of records maintained by NASA;

(b) Permit an individual to prevent records pertaining to the indivudual obtained by NASA and placed in a system of records for a particular purpose from being used or made available for another purpose without the individual's consent;

(c) Permit an individual to gain access to information about the individual in a NASA system of records, to have a copy made, and, if appropriate under Subpart 1212.6, to correct or amend the records; and

(d) Maintain any record in a system of records only for a necessary and lawful purpose, assure that the information is current and accurate, and provide adequate safeguards to prevent misuse of the information.

Subpart 1212.2—Requirements for Maintaining Systems of Records

§ 1212.200 Publication of annual system notices.

(a) A system notice for each NASA system of records shall be published annually in the FEDERAL REGISTER in the format prescribed by the Office of Management and Budget and the General Services Administration.

(b) In accordance with reporting requirements issued by the Office of Management and Budget, NASA shall provide to Congress and the Office of Management and Budget advance notice of any proposal to establish or significantly alter any NASA system of records.

§ 1212.201 System of records of other agencies under NASA's control.

(a) The procedures concerning maintenance of and access to records of other agencies under NASA's control shall normally be governed by the regulations of the agency publishing the system notice for the particular system of records.

(b) Any system of records maintained by NASA which is in addition to or substantially different from those of a government-wide nature described in the notice published by another agency shall be regarded as a NASA system of records subject to the requirements of this part, and the NASA system notice shall include a reference to the system notice of the other agency.

§ 1212.202 Requirements for maintaining systems of records.

In maintaining systems of records, the following requirements shall be met:

(a) Maintain only information about an individual relevant and necessary to accomplish a purpose or to carry out a function of NASA authorized by law or by Executive Order of the President.

(b) Maintain records used by NASA officials in making any determination about any individual with such accuracy, relevance, timeliness, and completeness reasonably necessary to assure fairness to the individual in making the determination.

(c) Maintain no record describing how an individual exercises rights guaranteed by the First Amendment to the U.S. Constitution unless expressly authorized by statute or by the individual, or unless required by an authorized law enforcement activity.

§ 1212.203 Requirements for collecting information.

In collecting information for systems of records, the following requirements shall be met:

(a) Information shall be collected to the greatest extent practicable directly from the individual, particularly when the information may result in adverse determinations about the individual's rights, benefits, and privileges under Federal programs. Exceptions to this policy may be made under certain circumstances, such as one of the following:

(1) There is need to verify the accuracy of information supplied by an individual.

(2) The information can only be obtained from a third party.

(3) There is no risk that information collected from third parties, if inaccurate, could result in an adverse determination to the individual concerned.

(4) Provisions are made to verify with the individual information collected from a third party.

(b) Each individual who is asked to supply information shall be informed of the following:

(1) The authority (whether granted by statute, or by Executive Order of the President) for requesting the information;

(2) Whether disclosure is mandatory or voluntary;

(3) The intended official use of the information;

(4) The routine uses which may be made of the information, as published in the system notices;

(5) The effects on the individual, if any, of not providing all or any part of the requested information.

§ 1212.204 Mailing lists.

(a) NASA may maintain for official purposes lists of individuals, their addresses and telephone numbers, including, if appropriate, home addresses and telephone numbers. These lists are not NASA systems of records for the purposes of this part.

(b) NASA will not sell, rent or otherwise disclose mailing lists to anyone except for official purposes of NASA, unless otherwise required by law.

§ 1212.205 Social security account numbers.

(a) It is unlawful for NASA to deny an individual any right, benefit, or privilege provided by law because of the individual's refusal to disclose the individual's social security account number, except where:

(1) The disclosure is required by law; or

(2) The disclosure is from a system of records in existence and operating before January 1, 1975, and was required under statute or regulation adopted before that date to verify the identity of the individual.

(b) Any time an individual is requested to disclose the social security account number, the official requesting the disclosure shall indicate whether that disclosure is mandatory or voluntary, by what authority the number is requested, and what uses will be made of it.

§ 1212.206 Safeguarding information in systems of records.

(a) Safeguards appropriate for a NASA system of records shall be developed by the system manager in a written plan approved by the installation Security Officer.

(b) When records or copies of records are distributed to persons other than those having custody of the systems of records, they shall be prominently identified as records protected under the Privacy Act and shall be subject to the same safeguard, retention and disposition requirements applicable to the system of records.

(c) Records that are otherwise required by law to be released to the public need not be safeguarded or identified as Privacy Act records. The system notice shall indicate that the records are publicly available.

§ 1212.207 Duplicate copies of records or portions of records.

(a) NASA officials may maintain for official purposes duplicate copies of records or portions of records from a system of records for use within their organizational unit. This practice should occur only where there are justifiable organizational needs for it, e.g., where geographic distances make use of the system of records time consuming or inconvenient. These duplicate copies shall not be considered a separate NASA system of records. For example, an office head or designee may keep duplicate copies of personnel, training, or similar records on employees within the organization for administrative convenience purposes.

(b) No disclosure shall be made from duplicate copies outside of the organizational unit. Any outside request for disclosure shall be referred to the appropriate system manager for response.

(c) Duplicate copies are subject to the same safeguard requirements applicable to the system of records.

Subpart 1212.3—Authority and Responsibilities

§ 1212.300 NASA employees.

(a) Each NASA employee is reponsible for adhering to the requirements of the Privacy Act and this part.

(b) An employee shall not seek or obtain access to a record in a NASA system of records or to copies of any portion of such records under false pretenses. Only those employees with an official "need to know" may seek and obtain access to records pertaining to others.

(c) Employees shall refrain from discussing or disclosing personal information about others which they have obtained because of their official need to know such information in the performance of official duties.

(d) To the extent included in an individual contract which provides for the maintenance by or on behalf of NASA of a system of records to accomplish a function of NASA, the requirements of this section shall apply to contractor employees who work under the contract.

§ 1212.301 Associate Deputy Administrator.

The Associate Deputy Administrator is responsible for:

(a) Making final agency determinations on appeals (§ 1212.603);

(b) Authorizing exemptions § 1212.700); and

(c) Authorizing an extension of up to 30 work days for making a final determination on an appeal (§ 1212.605).

§ 1212.302 Associate Administrator for Management.

(a) The Associate Administrator for Management is responsible for the following:

(1) Providing overall supervision and coordination of NASA's policies and procedures under this part;

(2) Approving system notices for publication in the FEDERAL REGISTER;

(3) Assuring that NASA employees and officials are informed of their responsibilities and that they receive appropriate training for the implementation of these requirements; and

(4) Preparing and submitting the annual and special reports required under this part, including establishing appropriate reporting procedures.

(b) The Associate Administrator for Management may establish a position of "NASA Privacy Officer" or designate someone to function as such an officer, reporting directly to the Associate Administrator for Management, and delegate to that officer any of the functions described in paragraph (a) of this section.

[44 FR 54994, Sept. 24, 1979, as amended at 47 FR 50467, Nov. 8, 1982]

§ 1212.303 Headquarters and field or component installations.

(a) Officials-in-Charge of Headquarters Offices, Directors of NASA Field Installations and Officials-in-Charge of Component Installations are responsible for the following with respect to those systems of records maintained in the organization:

(1) Avoiding the establishment of new systems of records or new routine uses of a system of records without first complying with the requirements of this part;

(2) Ensuring that the requirements of this part and the Privacy Act are followed by all employees;

(3) Ensuring that there is appropriate coordination within NASA before a determination is made to disclose information without the individual's consent under authority of § 1212.400(b); and

(4) Providing appropriate oversight for responsibilities and authorities exercised by system managers under their jurisdiction (§ 1212.304).

(b) Directors of NASA Field Installations and Officials-in-Charge of Component Installations may establish the position of Installation Privacy Officer or designate someone to function as such to assist in carrying out the responsibilities listed in paragraph (a) of this section.

[44 FR 54994, Sept. 24, 1979, as amended at 47 FR 50467, Nov. 8, 1982]

§ 1212.304 System manager.

(a) Each system manager is responsible for the following with regard to the system of records over which the system manager has congnizance:

(1) Overall compliance with the Privacy Act and these regulations,

(2) Ensuring that each person involved in the design, development, operation or maintenance of the system of records is instructed with respect to the requirements of this part and the possible penalties for noncompliance;

(3) Submitting a request to the Associate Deputy Administrator for an exemption of the system under Subpart 1212.7, setting forth in proposed rulemaking form the reasons for the exemption and citing the specific provision of the Privacy Act which is believed to authorize the exemption;

(4) After consultation with the Office of the General Counsel or the Chief Counsel, making reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record;

(5) In accordance with the requirements of § 1212.601, making an initial determination on an individual's request to correct or amend a record;

(6) Prior to disclosure of any record about an individual, assuring that the record is first reviewed for accuracy, completeness, timeliness and relevance;

(7) Authorizing disclosures of a record without the individual's consent under § 1212.400(b)(1) through (11);

(8) Responding within the requirements of § 1212.500 to an individual's request for information as to whether the system contains a record pertaining to the individual;

(9) In accordance with the requirements of Subpart 1212.5, responding to an individual's request for access and copying of a record;

(10) Correcting a record under § 1212.606, or filing in an individual's record a statement of dispute and the NASA addendum submitted in accordance with § 1212.607;

(11) Preparing an addendum to an individual's statement of dispute (§ 1212.607);

(12) Maintaining disclosure accountings in accordance with the requirements of § 1212.401;

(13) Notifying persons to whom a record has been disclosed and for which an accounting was made as to disputes and corrections involving the record; and

(14) Developing appropriate safeguards for the system of records.

(b) Where a system of records has subsystems described in the system notice, the subsystem manager will have the responsibilities outlined in paragraph (a) of this section. Although the system manager has no line authority over subsystem managers, the system manager does have overall functional responsibility for the total system, and may issue guidance to subsystem managers on implementation of this part. When furnishing information for required reports, the system manager will be responsible for reporting on the entire system of records, including any subsystems.

(c) Exercise of the responsibilities and authorities in paragraph (a) of this section by any system or subsystem managers at a NASA installation shall be subject to any conditions or limitations imposed in accordance with § 1212.303 (a)(4) and (b).

[44 FR 54994, Sept. 24, 1979, as amended at 47 FR 50467, Nov. 8, 1982]

§ 1212.305 Assistant Administrator for Procurement.

The Assistant Administrator for Procurement is responsible for developing appropriate procurement regulations and procedures under which NASA contracts requiring the maintenance of a system of records in order to accomplish an agency function are made subject to the requirements of this part.

[47 FR 50467, Nov. 8, 1982]

§ 1212.306 Delegation of authority.

Authority necessary to carry out the responsibilities specified in this Subpart 1212.3 is delegated to the officials named, subject to any conditions or limitations imposed in accordance with § 1212.303 (a)(4) and (b).

Subpart 1212.4—Disclosure of Records

§ 1212.400 Restrictions on disclosure.

(a) No record in a NASA system of records shall be disclosed to any person, or to another agency, except by written request of, or with the prior written consent of the individual to whom the record pertains, unless the disclosure is authorized by paragraph (b) of this section.

(b) Under 5 U.S.C. 552a(b), disclosure of a record in a NASA system of records is authorized without the consent of the subject individual, if the disclosure of the record would be:

(1) To an officer or employee of NASA who has a need for the record in the performance of official duties;

(2) Required under the Freedom of Information Act (5 U.S.C. 552) and Part 1206;

(3) For a routine use described in the system notice for the system of records;

(4) To the Bureau of Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13, U.S. Code;

(5) To a recipient who has provided NASA with adequate advance written assurance that the record will be used solely as a statistical record, and the record is transferred in a form that is not individually identifiable;

(6) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services Administration or a designee to determine whether the record has such value;

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity, if the activity is authorized by law and if the head of the agency or instrumentality has made a written request to NASA specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) To a person on a showing of compelling circumstances affecting the health or safety of an individual if notification of the disclosure is sent to the last known address of the subject individual;

(9) To either House of Congress or, to the extent the matter is within its jurisdiction, any committee or subcommittee of Congress, any joint committee of Congress or subcommittee of any such joint committee;

(10) To the Comptroller General, or any authorized representatives, in the course of the performance of the duties of the General Accounting Office; or

(11) By order of a court of competent jurisdiction.

§ 1212.401 Accounting of certain disclosures.

(a) The system manager shall keep a disclosure accounting for each disclosure to a third party of a record from a system of records. Disclosure accountings are not required but are recommended for disclosures made:

(1) With the subject individual's consent, or

(2) Under the authority of § 1212.400(b) (1) or (2).

(b) The disclosure accounting required by paragraph (a) of this section include:

(1) The date, nature, and purpose of the disclosure; and

(2) The name and address of the recipient person or agency.

(c) The disclosure accounting shall be retained for at least 5 years after the disclosure or for the life of the record, whichever is longer.

(d) The disclosure accounting maintained under the requirements of this section is not itself a system of records.

[44 FR 54994, Sept. 24, 1979, as amended at 47 FR 50467, Nov. 8, 1982]

§ 1212.402 Access to disclosure accounting.

Except for disclosures made under the authority of § 1212.400(b)(7) or where the system is exempt (see Subpart 1212.7), the disclosure accounting required under § 1212.401 shall be made available to the subject individual upon request in accordance with Subpart 1212.5

§ 1212.403 Review of records for accuracy.

Before disclosing any record about an individual to any person other than a NASA employee, unless the disclosure is required under the Freedom of Information Act (see § 1212.400(b)(2)), NASA shall make reasonable efforts to assure that the record is accurate, complete, timely and relevant for NASA purposes.

§ 1212.404 Notification of disclosure under compulsory legal process.

If a record is disclosed to any person under a compulsory legal process, the NASA system manager, after consultation with the Office of the General Counsel or the Chief Counsel, shall make reasonable efforts to serve notice on the subject individual when the compulsory process becomes a matter of public record. The mailing of notice to the individual's last known address constitutes a reasonable effort to notify the individual.

§ 1212.405 Notification to prior recipients of corrected or disputed records.

If any correction or statement of dispute is made or filed in a record under Subpart 1212.6, the NASA system manager shall notify each person or agency to whom that portion of the record had been disclosed, if an accounting of the disclosure exists under § 1212.401, as to the correction or statement of dispute.

Subpart 1212.5—Access to Records

§ 1212.500 Requests for access or general information.

(a) The procedures outlined in this Subpart 1212.5 apply to the following types of requests under the Privacy Act made by individuals concerning records about themselves:

(1) To determine if information on the requester is included in a system of records;

(2) For access to a record; and

(3) For an accounting of disclosures.

(b)(1) Requests must be directed to the appropriate system manager, or, if unknown, to the NASA information center. The request should be identified clearly on the envelope and on the letter as a "Request Under the Privacy Act."

(2) If known, requests should contain the following information to insure timely processing:

(i) Name and address of subject.

(ii) Identity of the system of records.

(iii) Nature of the request. If a request for amendment, a complete and comprehensive description of the amendment.

(iv) Identifying information such as location of the record, if known, full name, birth date, etc., as specified in the applicable system notice to assist in identifying the request.

(c)(1) If a request for access or amendment is received by the information center, it will record the date of receipt and immediately forward the request to the responsible system manager for handling.

(2) The NASA information center or the system manager, as appropriate, will acknowledge receipt of the request by NASA within 10 work days. If the request is so incomplete or incomprehensible that the requested record cannot be identified, additional information or clarification will be requested in the acknowledgment, and assistance to the individual will be offered as appropriate. If the request is sufficient for processing, the acknowledgment shall identify the responsible system manager.

(d) NASA need not comply with a general request for access to information concerning an individual, e.g., a request to provide copies of "all information contained in your files concerning me," although a good faith effort will be made to locate records if there is reason to believe NASA has records on the individual.

(e) Copies of all current NASA system notices, as well as a copy of these regulations, shall be maintained for public inspection in each NASA information center. An individual may address any general inquiries concerning NASA systems of records and these regulations to the appropriate NASA information center.

§ 1212.501 Right of access.

(a) Upon request in person, and following the identification procedures of § 1212.502, a subject individual and any accompanying representative shall be granted access to his or her record, including the right to request copies, unless the system of records has been determined to be exempt from this requirement under 5 U.S.C. 552a (j) or (k).

(b)(1) Upon a written request of the subject individual, the individual's representative shall be granted access to the subject's record, unless that system of records has been determined to be exempt under 5 U.S.C. 552a (j) or (k). The representative also may request copies of all or a portion of the record.

(2) A written request to allow access by a representative shall be signed by the subject individual and contain his or her address as well as the name and address of the representative being authorized access. The identities of both the subject individual and the representative must be verified following the procedures of § 1212.502.

(c) When an individual submits a request for records citing both the Privacy Act and the Freedom of Information Act, it shall be processed under Part 1206 if the individual is seeking records pertaining to a third party. If the individual is seeking his or her own records, the request shall be processed under this part. If the records requested are required to be released under the Freedom of Information Act (5 U.S.C. 552(b)), then a Privacy Act exemption may not be invoked to deny access. NASA shall not rely on any exemption contained in the Freedom of Information Act to withhold from an individual any record which is otherwise accessible to the individual under this part.

§ 1212.502 Identification procedures.

(a) Before a copy of a record is sent by mail in response to a written request for access, there must be sufficient evidence to assure that the requester and the subject of the record are the same. NASA reserves the right, at the discretion of the system manager, to require that a certificate of a notary public or equivalent official empowered to administer oaths accompany the request.

(b)(1) Before granting access to records in person, the requester or representative shall present appropriate and satisfactory identification, including:

(i) A valid unexpired driver's permit; or

(ii) An official employment identification card or badge; or

(iii) Any other form of identification which includes the individual's name, signature, or photograph or physical description.

(2) If the individual has no suitable identification, a written statement shall be required asserting the individual's identity and stipulating that the individual understands that knowingly or willfully seeking or obtaining access to records about another individual under false pretenses is a misdemeanor and punishable by a fine of up to $5,000. A form will be provided by the system manager for this purpose.

(c) No verification of identity will be requested of individuals seeking access to records available to any member of the public under the Freedom of Information Act (5 U.S.C. 552) and Part 1206.

(d) Identity procedures more stringent than those required in this section may be prescribed by the system manager in the system notice when the records are medical or other highly sensitive records.

§ 1212.503 Fee schedule.

(a) *Prohibition against charging fees.* Individuals will not be charged for:

(1) Search for or retrieval of the requesting individual's records;

(2) Review of the requesting individual's records;

(3) Making a copy of a requesting individual's record when it is a necessary part of the process of making the record available for review;

(4) Transportation of the requesting individual's record;

(5) Making a copy of an amended record to provide the requesting individual with evidence of the amendment.

(b) *Waiver.* The system manager may, at no charge, provide copies of a record if it is determined the production of the copies are in the interest of the government.

(c) *Fee schedule and method of payment.* Fees will be charged as provide below, except as provided in paragraphs (a) and (b) of this section.

(1) Duplication of records—The system manager will follow the provisions of § 1206.700(a) in charging fees for duplication of records only.

(2) Where it is anticipated that duplication fees chargeable under this section will amount to more than $25.00, and the requester has not indicated in advance a willingness to pay fees as great as are anticipated, the requesting individual shall be notified of the amount of the anticipated fees before copies are made. The notification shall offer the requester the opportunity to confer with agency personnel in a manner which will reduce the fees, yet still meet the needs of the requester.

(3) Where the anticipated fee chargeable under this section exceeds $25.00, an advance deposit of part or all of the anticipated fee may be required.

[48 FR 12084, Mar. 23, 1983]

§ 1212.504 Procedures for responding to requests for access.

(a)(1) The system manager, in response to a request for access, shall:

(i) Notify the requester that there is no record on the individual in the system of records; or

(ii) Make the individual's record available for personal inspection in the presence of a NASA representative, or upon request, promptly provide copies of the record, subject to the fee requirements.

(2) Unless the system manager agrees to another location, personal inspection of the record shall be at the location of the record as identified in the system notice.

(b) Normally, the system manager shall respond to a request for access within 10 work days of receipt of the request and the access shall be provided within 30 work days.

(c) The provisions of paragraph (a) do not apply where the record is subject to additional restrictions as specified in the system notice, or if it is exempt under 5 U.S.C. 552a (j) or (k) and is not otherwise required to be released under the Freedom of Information Act. Under these circumstances, the system manager shall notify the requester within 10 work days.

(d) In the event a request for access to a record is not granted within 30 work days of receipt of the request, the individual shall have the right to appeal. Such an appeal shall be filed and processed under the provisions of Subpart 1212.6. In any determination by a system manager denying an individual's request for access made under this section, the individual shall be informed in writing of:

(1) The reasons for the refusal; and

(2) The procedures to be followed to request a review of the refusal by the Associate Deputy Administrator, including the mailing address. (See § 1212.602)

§ 1212.505 Medical records.

Normally, an individual's medical record shall be disclosed to the individual, unless, in the judgment of the system manager, in consultation with a medical doctor, access to the record could have an adverse effect upon the individual. In this case, the system manager shall allow access to the record by a medical doctor designated in writing by the requesting individual. (See § 1212.501(b))

§ 1212.506 Test materials.

Test material and copies of certificates of eligibles and other lists of eligibles, the disclosure of which is proscribed by 5 CFR 294.501, shall be removed from an individual's record before granting access.

§ 1212.507 Release of records of deceased individuals.

Records of individuals who are deceased may be released to the executor or administrator of the individual's estate, or, if none, to the individual's next of kin, if the system manager has sufficient evidence to establish that the individual is deceased and if the identity procedures of § 1212.502 have been met by the representative.

Subpart 1212.6—Corrections and Amendments to Records and Appeals

§ 1212.600 Requests for correction or amendment of a record.

A subject individual may request that NASA correct or amend the individual's record. In making a request for correction, the individual must demonstrate why the correction is appropriate. Such a request shall be in writing, addressed to the appropriate system manager, and shall contain the following:

(a) A notation on the envelope and on the letter that it is a "Request for Amendment of Individual Record under the Privacy Act;"

(b) The name of the system of records;

(c) Any information necessary to retrieve the record, as specified in the system notice for the system of records;

(d) A description of that information in the record which is alleged to be incomplete or erroneous; and

(e) The reasons for requesting the change, together with any documentary evidence or material available to support the request.

§ 1212.601 Procedures and time limits for making initial determinations on requests to correct or amend.

(a) Within 10 work days of receipt by the system manager of an individual's request to correct or amend a record, the system manager shall provide the individual with a written determination or a written acknowledgement advising when a report of the action taken may be received.

(b) The system manager shall provide the individual with a written determination witnin 30 work days of receipt of the request unless unusual circumstances preclude completing action within that time. If the determination is to refuse to correct or amend the record as requested, the written determination shall explain the reasons for the refusal and inform the requester of the procedures to be followed to appeal the determination.

§ 1212.602 Procedures and time limits for appeals.

(a) A subject individual who (1) has requested amendment or correction of a record and has received an adverse initial determination, or (2) has been denied access to a record, or (3) has not been granted within 30 work days of receipt a request (See §1212.504), may appeal to the Associate Deputy Administrator.

(b) An appeal shall:

(1) Be in writing and addressed to the Associate Deputy Administrator, NASA, Washington, D.C. 20546;

(2) Be identified clearly on the envelope and in the letter as an "Appeal under the Privacy Act;"

(3) Include a copy of any pertinent documents; and

(4) State the reasons for the appeal.

(c) Appeals from adverse initial determinations or denials of access must be submitted within 30 calendar days of the date of receipt of the initial determination. Appeals involving failure to grant access may be submitted any time after the 30 work day period has expired (see § 1212.504).

§ 1212.603 Action on appeals.

(a) Except as provided in § 1212.607, a final determination on an appeal shall be made, and the requester notified, within 30 work days after its receipt.

(b) If a determination to deny access is upheld, the requester will be informed of the right to judicial review under 5 U.S.C. 552a(g).

(c) If a denial of a request to correct or amend a record is upheld, the final determination shall:

(1) Explain the basis for the denial;

(2) Include information as to how the requester goes about filing a statement of dispute under the procedures of § 1212.607; and

(3) Include a statement that the final determination is subject to judicial review under 5 U.S.C. 552a(g).

§ 1212.604 Procedures for appeal of adverse determinations involving records of other agencies.

If an individual disagrees with an adverse determination by NASA involving access to or amendment of records belonging to another agency, the individual may seek review of the determination under procedures prescribed by the other agency.

§ 1212.605 Time extensions for good cause shown.

(a) When good cause is shown, the time limits for making a final determination may be extended for up to 30 work days.

(b) If an extension of time under this section is granted, the individual shall be promptly notified in writing of the reasons and the date when a final determination will be sent.

§ 1212.606 Correction or amendment of record.

When any record is corrected or amended under the procedures of this Subpart 1212.6, the correction shall be made by the system manager clearly on the record itself and all inaccurate information shall be deleted and destroyed. The individual shall then be informed in writing that the correction has been made. If the inaccurate or incomplete portion of the record has previously been disclosed and an accounting of the disclosure exists in accordance with the requirements of § 1212.401, then the system manager shall notify those persons or agencies of the corrected or amended information, referencing the prior disclosures (see § 1212.405).

§ 1212.607 Statements of dispute.

(a) If on appeal, a refusal to correct or amend records is upheld, the individual may file a statement of dispute.

(b) A statement of dispute shall:

(1) Be in writing;

(2) Set forth reasons for the individual's disagreement with NASA's refusal to amend the record;

(3) Be concise;

(4) Be addressed to the system manager; and

(5) Be identified on the envelope and in the letter as a "Statement of Dispute under the Privacy Act."

(c) The system manager shall prepare and include an addendum to the statement explaining the basis for NASA's refusal to amend the disputed record. A copy of the addendum shall be provided to the individual.

(d) The system manager shall ensure that the statement of dispute and addendum are either filed with the disputed record or that a notation appears in the record clearly referencing the statement of dispute and addendum so that they may be readily retrieved.

§ 1212.608 Disclosure of disputed information.

(a) The system manager shall promptly provide persons or agencies to whom the disputed portion of a record was previously disclosed and for which an accounting of the disclosure exists under the requirements of § 1212.401, with a copy of the statement of dispute and addendum, along with a statement referencing the prior disclosure (see § 1212.405). The subject individual shall be notified as to those individuals or agencies which are provided with the statement of dispute and addendum.

(b) Any subsequent disclosure of a disputed record shall clearly note the portion of the record which is disputed and shall be accompanied by a copy of the statement of dispute and addendum.

Subpart 1212.7—Exemptions

§ 1212.700 Exemptions.

(a) Under the provisions of 5 U.S.C. 552a(j) and (k), the Administrator of NASA is authorized to exempt certain NASA systems from portions of the requirements of this part.

(b) For those NASA systems of records that are determined to be exempt, the system notice shall describe the exemption and the reasons.

(c) Nothing in this part shall allow an individual access to any information compiled by NASA in reasonable anticipation of a civil action or proceeding.

§ 1212.701 Systems of records for which exemptions apply.

Exemptions have been invoked, in accordance with § 1212.700, for the following NASA systems of records:

(a) *Inspector General Investigations Case files*—(1) *Section of the Act from which exempted.* The Inspector General Investigations Case Files system of records is exempt from all sections of the Privacy Act (5 U.S.C. 552a) *except* the following: (b) relating to conditions of disclosure; (c)(1) and (2) relating to keeping and maintaining a disclosure accounting; (e)(4)(A) through (F) relating to publishing an annual system notice setting forth name, location, categories of individuals and records, routine uses, and policies regarding storage, retrievability, access controls, retention and disposal of the records; (e)(6), (7), (9), (10) and (11) relating to criminal penalties.

(2) *Reasons for exemption.* The determination to exempt this system of records has been made by the Administrator of NASA in accordance with 5 U.S.C. 552a(j) and this subpart for the reason that the Office of Inspector General is a component of NASA which performs as its principal function activity pertaining to the enforcement of criminal laws, within the meaning of 5 U.S.C. 552a(j)(2).

(b) *Security Records System*—(1) *Sections of Act from which exempted.* The Security Records System is exempt from the following sections of the Privacy Act (5 U.S.C. 552a): (c)(3) relating to access to the disclosure accounting; (d) relating to access to the records; (e)(1) relating to the type of information maintained in the records; (e)(4)(G), (H) and (I) relating to publishing in the annual system notice information as to agency procedures for access and correction, and information as to the categories of sources of records; and (f) relating to developing agency rules for gaining access and making corrections.

(2) *Reasons for exemption.* The determination to exempt this system of records has been made by the Administrator of NASA in accordance with 5 U.S.C. 552a(k) and this Subpart 1212.7 for the following reasons:

(i) Personnel Security Records contained in the system of records which are compiled solely for the purpose of determining suitability, eligibility or qualifications for Federal civilian employment, Federal contracts, or access to classified information are exempt under the provisions of 5 U.S.C. 552a(k)(5), but only to the extent that the disclosure of such material would reveal the identity of a confidential source.

(ii) Criminal Matter Records are contained in the system of records and are exempt under the provisions of 5 U.S.C. 552a(k)(2) to the extent they constitute investigatory material compiled for law enforcement purposes.

(iii) The system of records includes records subject to the provisions of 5 U.S.C. 552(b)(1) (required by Executive order to be kept secret in the interest of national defense or foreign policy), and such records are exempt under 5 U.S.C. 552a(k)(1).

[44 FR 54994, Sept. 24, 1979, as amended at 45 FR 67079, Oct. 9, 1980]

Subpart 1212.8—Failure to Comply With Requirements of this Part

§ 1212.800 Civil remedies.

Failure to comply with the requirements of the Privacy Act and this part could subject NASA to civil suit under the provisions of 5 U.S.C. 552a(g).

§ 1212.801 Criminal penalties.

(a) A NASA employee may be subject to criminal penalties under the provisions of 5 U.S.C. 552a(i) (1) and (2).

(b) An individual who seeks access to a NASA record under false pretenses is subject to criminal penalties under 5 U.S.C. 552a(i)(3).

PART 1213—RELEASE OF INFORMATION TO NEWS AND INFORMATION MEDIA

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1213.108 Security.

AUTHORITY. 42 U.S.C. 2473(a) (3) and NSDD-84, "Safeguarding National Security Information."

SOURCE: 52 FR 45936, Dec. 3, 1987, unless otherwise noted.

§ 1213.100 Scope.

This Part 1213 sets forth the policy governing the release of information in any form to news and information media. Not included is the release of scientific and technical information to scientific and technical journals and audiences.

§ 1213.101 Policy.

(a) Consistent with NASA statutory responsibility, NASA will "* * * provide for the widest practicable and appropriate dissemination of information concerning its activities and the results thereof, * * *"

(b) Release of information concerning NASA activities and the results will be made promptly, factually and completely. Exceptions include that information whch may be exempt from disclosure under the "Freedom of Information Act" (5 U.S.C. 552, as amended) (14 CFR Part 1212). For classified DoD missions on the Naitonal Space Transportation System (NSTS), release of information concerning NASA activities will be restricted by the STS Security Classification Guide. In addition, information concerning the survivability/vulnerability of the NSTS may be classified for all NSTS operations.

(c) NASA will respond promptly to queries from the information media and industry, and cooperate with contractors in their release of NASA related informational material including advertising.

(d) NASA officials may participate in interviews and speak for the Agency in areas of their assigned responsibility.

§ 1213.102 Responsibility.

(a) The Associate Administrator for Communications is responsible for the development and overall administration of an integrated agencywide communications program and determines whether the specific information is to be released. The Associate Administrator for Communications will:

(1) Direct and coordinate all Headquarters and agencywide public information activities.

(2) Direct and coordinate all agencywide news-oriented audiovisual activities.

(b) In accordance with § 1213.104, the Public Affairs Officers assigned to Headquarters Program and Staff Offices are responsible for developing plans and coordinating all public information activities covering their respective programs at Headquarters and in the field.

(c) In accordance with § 1213.104, Directors of Field Installations, through their Public Affairs Officers, are responsible for initiating and obtaining concurrences for information programs and public releases issued by their respective installation and component installations.

(d) The requirements of this section do not apply to the Office of Inspector General (IG) regarding IG activities.

§ 1213.103 Procedures for issuance of news releases.

(a) All Headquarters news releases will be issued by the Office of Communications, Media Services Division.

(b) Directors of Field Installations, through their Public Affairs Officer, may release information for which that field installation is the primary or sole source, i.e., launch, mission, and planetary encounter commentary; telephone recorded messages; status reports; and releases of local or regional interest. Release of information that has national significance will be coordinated with the Associate Administrator for Communications. Material received from contractors prior to its public release may be reviewed for technical accuracy at the contracting installation.

(c) The requirements of this section do not apply to the Office of Inspector General regarding IG activities.

§ 1213.104 Procedures for news release coordination and concurrence.

(a) *General.* All organizational elements of NASA involved in preparing and issuing NASA news releases are responsible for proper coordination and obtaining concurrences and clearances prior to issuance of the news release. Such coordination will be accomplished through the Associate Administrator for Communications, NASA Headquarters.

(b) *Headquarters-field.* (1) The Headquarters Office of Communications will release information after obtaining all necessary concurrences and clearances from the appropriate Program or Staff Office. Field installations will obtain clearances from the appropriate Institutional Program or Staff Office.

(2) Headquarters issuance of a news release bearing on a field installation will be coordinated with the installation through the appropriate Institutional Program Office/Public Affairs Officer, Associate Administrator for Communications, or Director, Media Services Division. If Headquarters is the issuing agency for a release for which the primary source is an installation, the Office of Communications will keep the installation fully informed.

(3) If the Office of Communications changes, delays, or cancels a release proposed for issuance by a field installation, the installation and the appropriate Institutional Program Office affected will be notified of the reasons for the action.

(c) *Field-other.* A release originating in one field installation that involves the activities of another installation (including Headquarters) will not be issued until the concurrences of all installations and appropriate Institutional Program Offices concerned have been obtained. The originating installation is responsible for arranging a mutually acceptable release time.

(d) *Simultaneous release.* Where a release is to be simultaneously issued, whether by Headquarters, a field installation, industry-NASA, or university-NASA, it will be so stated on the news release. Simultaneous release will be coordinated by the Headquarters Director, Media Services Division.

(e) *Date lines.* Out-of-town date lines will not be used on releases issued by Headquarters except in the case of an advance release of a speech text intended for regional distribution in the area where the speech will be delivered.

(f) *Exchange of releases.* All Agency releases will be exchanged electronically with all field installations by the Headquarters newsroom. The full text of important releases, regardless of source, which may generate unusual interest and queries shall be sent by electronic mail or telephoned to all interested installations and Headquarters in advance of release time to enable public information officers to respond intelligently to queries arising locally.

(g) *Exchange of communication activities.* All field installations will exchange information with the appropriate Headquarters Public Affairs Officers concerning news events and releases. Immediate notification will be made to Headquarters and any impacted installation of events or situations that will make news, particularly of a negative nature.

(h) The requirements of this section do not apply to the Office of Inspector General regarding IG activities.

§ 1213.105 Interviews.

(a) NASA personnel will respond promptly to requests to media representatives for information or interviews.

(b) Normally, requests for interviews with NASA officials will be made through the appropriate Public Affairs Office. However, journalists will have direct access to those NASA officials they seek to interview.

(c) Information given to the press will be on an "on-the-record" basis only and attributable to the person(s) making the remarks. Any NASA employee providing material to the press will identify himself/herself as the source.

(d) Any attempt by news media representatives to obtain classified information will be reported through the Headquarters Office of Communications or Installation Public Affairs Office to the Installation Security Office. The knowing disclosure of classified information to unauthorized individuals will be cause for disciplinary actions against the NASA employee involved.

(e) Public information volunteered by a NASA official will not be considered exclusive to any one media source and will be made available to other sources, if requested.

(f) For a DoD classified operation, all inquiries concerning this activity will be responded to by the designated DoD officer.

§ 1213.106 Audiovisual material.

(a) NASA's central repository of audiovisual material will be available to the information media and to all NASA installations.

(b) Field installations will provide NASA Headquarters with:

(1) Selected prints and original or duplicate negatives of news-oriented photographs generated within their respective areas.

(2) Selected color motion picture footage (prints) which, in the opinion of the installation, would be appropriate for use as features in programs.

(3) Audio and/or video tapes of significant news developments and other events of historical or public information interest.

(4) For DoD classified operations, all audiovisual material of or related to the classified operation will be reviewed and deemed releasable by the designated DoD officer.

§ 1213.107 International news releases.

(a) All releases of information involving NASA activities or views affecting another country or an international organization require prior coordination with the International Relations Division, Office of External Relations, through the Public Affairs Officer assigned to that division.

(b) NASA field installations and Headquarters offices will report all visits proposed by representatives of foreign news media to the Public Affairs Officer for the International Relations Division, NASA Headquarters.

(c) Safeguards intended to control access to classified information, materials, or facilities and provisions to protect the NSTS as a national resource will not be diminished in providing assistance to foreign or U.S. news representatives.

§ 1213.108 Security.

It is the responsibility of each Public Affairs Officer to implement the STS Security Classification Guide for each DoD classified operation on the NSTS. Guidance for this implementation will be provided in the joint NASA and USAF Public Affairs plan for each mission. In addition, each NASA installation involved in the NSTS will have information concerning the protection of the NSTS as a national resource. This category of information, including NSTS survivability/vulnerability data, may be classified. Therefore, all questions regarding security classification will be resolved by the appropriate security classification officer at any NASA installation or by the designated DoD security officer for DoD classified information.

PART 1214—SPACE TRANSPORTATION SYSTEM

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AUTHORITY: Sec. 203, Pub. L. 85-568, 72 Stat. 429, as amended (42 U.S.C. 2473); sec. 201(b), Pub. L. 87-624, 76 Stat. 421 (47 U.S.C. 721(b)), unless otherwise noted.

Subpart 1214.1—Reimbursement for Shuttle Services Provided to Non-U.S. Government Users

SOURCE: 42 FR 3829, Jan. 21, 1977, unless otherwise noted.

§ 1214.100 Scope.

This Subpart 1214.1 sets forth:

(a) The policy on reimbursement for Shuttle services which are provided by NASA to non-U.S. Government users (as defined in § 1214.101) under launch services agreements, and

(b) Responsibilities for putting such policy into effect and carrying it out.

§ 1214.101 Definition.

For the purpose of this subpart, the term *Non-U.S. Government Users* means:

(a) Private persons or private organizations of the United States, including its territories, the District of Columbia, Panama Canal Zone, and Puerto Rico.

(b) Public organizations of the United States that are not part of the Government of the United States.

(c) Foreign governments or private persons and private or public organizations of foreign countries, except for the government of Canada and governments of the European Space Agency (ESA) member nations participating in Spacelab development when conducting experimental science or experimental applications missions, with no near-term commercial implications, undertaken on behalf of government agencies. The NASA Administrator shall determine the missions which qualify for this exception.

(d) International organizations, except the ESA when conducting experimental science or experimental applications missions with no near-term commercial implications.

(e) Other U.S. Government agencies, Canadian government agencies and the ESA, requesting Shuttle services from NASA in connection with launch and other services being performed by such agencies for users listed in paragraphs (a) through (d) of this section.

§ 1214.102 Reimbursement policy.

(a) *Features of policy.* (1) All users will be charged on a fixed price basis; there will be no post-flight charges, except for prespecified optional services.

(2) The price will be based on estimated costs.

(3) The price will be held constant for flights in the first three years of Space Transportation Systems (STS) operations.

(4) Payments with respect to total operations costs shall be escalated according to the Bureau of Labor Statistics Index for Compensation per hour, Total Private. Payments with respect to the use charge shall not be escalated.

(5) Subsequent to the first three years the price will be adjusted annually to insure that aggregate costs are recovered over a twelve-year period.

(6) Pricing incentives are designed to maximize the proper utilization of the STS.

(b) *Dedicated flight reimbursements.* (1) For the purposes of this policy, a dedicated flight is one sold to a single customer.

(2) The policy is established for two distinct phases of Shuttle operations. The first phase is through the third full fiscal year of Shuttle operations and the second phase consists of nine full fiscal years subsequent to the first phase.

(i) For a dedicated Shuttle flight during the first phase, NASA shall be reimbursed in an amount which is a pro-rata share of forecast additive costs averaged over the first phase of three years, plus a use charge in lieu of depreciation for the use of facilities, support equipment and the Shuttle fleet; however, the price shall not be less than a pro-rata share of forecast aggregate costs averaged over both the first and second phases of the twelve-year Shuttle operation period.

(ii) For a dedicated Shuttle flight during the second phase, NASA shall be reimbursed a pro-rata share of forecast aggregate costs over both phases to insure that total aggregate costs are recovered over the twelve year period.

(iii) The definition of the costs as specified in this subpart are set forth in Appendix A to this subpart.

(iv) Subject to NASA approval, a dedicated flight user may apportion and assign STS services to other STS users provided they satisfy STS user requirements. The price of integrating additional payloads will be negotiated.

(v) A summary of standard Shuttle services included in the flight price is set forth in Appendix B to this subpart.

(vi) The prices of optional Shuttle services are being developed and shall be set forth in the Shuttle Price Book which is being developed. A summary of the optional services is set forth in Appendix C to this subpart.

(vii) For the user with an experimental new use of space or first time use of space of great public value, the reimbursement to NASA for the dedicated, standard Shuttle flight in either the first or second phase shall be a pro-rata share of the average twelve-year additive costs as estimated at the time of negotiations. Programs which qualify for this price will be determined by an STS Exceptional Program Selection Process. In all cases, the Administrator will be the selection official.

(viii) For dedicated flight users, NASA and the user will identify a desired launch date within a period of ninety days three years prior to flight. One year prior to the flight a firm launch and payload delivery date will be identified by NASA. The firm launch date will be within the first sixty days of the original ninety-day period. Launch will occur on the firmly scheduled launch date or within a period of thirty days thereafter. The payload must be ready to launch for the duration of that period.

(c) *Shared flight reimbursements.* (1) The price of a shared Shuttle flight will be a fraction of the dedicated Shuttle flight price. The fraction will be based on the length and weight of the payload and the mission destination at the time of contract negotiations. The formula for computing the fraction is set forth in Appendix D to this subpart.

(2) For shared flight users, NASA and the user will identify a desired launch date three years prior to flight. Launch will occur within a period of ninety days, beginning on the desired launch date. One year prior to flight a payload delivery date and a firm launch date will be coordinated among the share flight users. This firm launch date will be within the first thirty days of the original ninety-day period. The launch will occur on the firmly scheduled launch date or within a period of sixty days thereafter. The payloads must be ready to launch for the duration of that period.

(3) A 20 percent discount on the standard flight price will be given to shared flight users who will fly on a space-available (standby) basis. NASA will provide launch services within a prenegotiated period of one year. Shared flight payloads must be flight deliverable to the launch site on the first day of the one-year period and sustain that condition until delivery to the launch site. The user will be notified sixty days prior to the firmly scheduled launch date which has been established by NASA. At that time, NASA will also establish a payload delivery date. The payload must be available at the launch site on the assigned delivery date and ready to launch for a period of sixty days after the firmly scheduled launch date.

(d) *Small self-contained payloads.* Packages under 200 pounds and smaller than five cubic feet which require no Shuttle services (power, deployment, etc.), and are for R&D purposes, will be flown on a space-available basis during both phases of Shuttle operation. The price for this service will be negotiated based on size and weight, but will not exceed $10,000 in 1975 dollars. A minimum charge of $3,000 in 1975 dollars will be made. If Shuttle services are required, the price will be individually negotiated. Reimbursement to NASA will be made at the time the package is scheduled for flight.

(e) *Options.* (1) Options for future flights will be made available to STS users already contracting for STS launch services. Fixed price options for flights in a given year beyond the three year fixed price period will be made available. For fixed price options, NASA shall be reimbursed the user's flight price compounded at 8 percent per year for each year beyond the fixed price period. The fee for this option is one million dollars in 1975 dollars. The option fee will be applied to the price of the user's flight. The user will exercise his option by contracting for the flight on the normal 33-month reimbursement schedule or the option fee will be retained by NASA.

(2) In order to insure that space will be available for flights in a given future year, scheduled launch options, where NASA will provide a launch during a ninety-day period, will be given to STS users already contracting for flights at a fee of $100,000 in 1975 dollars. The option fee will be applied to the price of the user's flight. The user will exercise his option by contracting for the flight on the normal 33-month reimbursement schedule or the option fee will be retained by NASA.

(3) In order to allow the user greater flexibility in selecting a launch date, the user may purchase a "floating launch date" option. At the time of contract execution, the user will begin to make payments according to a 33-month reimbursement schedule for this launching. At any time during Phase 1 or 2, the user may exercise this option by informing NASA of his desired launch date for this option which will then be negotiated by NASA and the user. This launch date must be at least 33 months after the date of the first reimbursement payment. If the desired launch date is within one year of the date of declaration, the short term call-up option and associated fee will apply. If the desired launch is to occur in a year for which a new price per flight is in effect, the user will pay the new price. The fee for this option is 10 percent of the user's flight price in effect at the time of contract execution and is payable at that time. This fee will not be applied to the price of the user's flight.

(4) Options must be exercised for a flight by the end of the second phase of operations or the option fee will be retained by NASA.

(f) *Fixed price period and escalation.* (1) The price will remain constant for flights during the first phase of Shuttle operation. For flights during the second phase, the price will be adjusted on a yearly basis, if necessary, to assure recovery of aggregate costs over a twelve year period. These adjusted prices will be applicable only to agreements executed after the adjustment is made.

(2) Shuttle services for both phases will be contracted on a fixed price basis. The payments in the contract will be escalated to the time of the payment using the Bureau of Labor Statistics Index for Compensation per hour, Total Private.

(g) *Earnest money.* Earnest money shall be paid to NASA prior to NASA's accepting a lunch reservation. The earnest money required shall be $100,000 per payload; however, if the payload is a small self-contained payload, the earnest money shall be $500.00 per payload. The earnest money shall be applied to the first payment for each payload made by the customer, or shall be retained by NASA if a launch services agreement is not signed.

(h) *Reimbursement schedule.* (1) Reimbursement shall be made in accordance with the reimbursement schedule contained in this subsection. No charges shall be made after the flight, except as negotiated in the contract for prespecified extra services. Those users who contract for Shuttle services less than three years before the desired launch date will be accommodated and will pay on an accelerated basis according to the reimbursement schedule.

(2) *Standby payloads.* (i) Before the establishment of a firmly scheduled launch date, the number of months before launch will be computed assuming a launch date at the mid-point of the designated one-year period.

(ii) Once the firmly scheduled launch date is established, the user shall reimburse NASA to make his payments current according to the reimbursement schedule.

(3) *Reimbursement schedule.*

[Percent of price]

Number of months before launch flight is scheduled	Months prior to scheduled launch date					
	33	27	21	15	9	3
33 or more	10	10	17	17	23	23
27-32		21	17	17	23	23
21-26			40	17	23	23
15-20				61	23	23
9-14					90	23
3-8						122

This schedule holds unless there are offsetting advantages to the U.S. Government of an accelerated launch schedule.

(4) Contracts for Shuttle services made one year or less before a flight and up to three months before a flight will be made on a space-available basis unless the short term call-up option is elected.

(i) *Short term call-up option.* (1) For flights contracted one year or less before launch, but not less than three months before launch, short term call-up will be provided to dedicated flight users at the dedicated flight price according to the reimbursement schedule.

(2) For dedicated flight users requiring short term call-up flights less than three months before launch, NASA will provide STS launch services on a space-availalble basis. NASA shall be reimbursed the dedicated flight price according to the reimbursement schedule plus short term call-up additional costs. The additional costs will be based on estimated costs to be incurred.

(3) For shared flights contracted one year or less before launch, but more than six months before launch, users may elect to short term call-up option. The user shall reimburse NASA the standard shared flight price according to the reimbursement schedule plus a load factor-recovery fee. The load factory-recovery fee is half the difference between a dedicated flight price and the user's shared flight price or the difference between a dedicated flight price and the total adjusted reimbursements from all shared users, whichever is less.

(4) For shared flights contracted six months or less before launch, but more than three months before launch, users may elect the short term call-up option. The user shall reimburse NASA the standard shared flight price according to the reimbursement schedule plus a load factor-recovery fee which is the difference between a dedicated flight price and the total adjusted reimbursement from all shared flight users.

(5) Shared flights contracted three months or less before launch will be flown on a space-available basis. NASA shall be reimbursed the shared flight price according to the reimbursement schedule plus short term call-up additional costs. These additional charges will be based on estimated costs to be incurred.

(6) For the purposes of this paragraph, "adjusted reimbursements" is defined to be reimbursements assuming all shared users are non-U.S. Government.

(7) The load factor-recovery fee will never be less than zero.

(8) The load factor-recovery fee is payable upon receipt of NASA's billing therefor.

(j) *Accelerated launches.* For users who reschedule a launch so that it occurs earlier than the planned launch, the user will pay on an accelerated reimbursement schedule. The user will reimburse NASA to make his payments current on the new accelerated reimbursement schedule. If the time from notification of acceleration is less than one year from the new launch date, short term call-up reimbursements will also apply.

(k) *Postponements*—(1) *Non-standby payloads.* (i) A user can postpone a flight of his payload one time with no additional charge if postponement occurs more than one year before launch. For subsequent postponed flights more than one year before launch, the user shall reimburse NASA a postponement fee of 5 percent of the user's flight price. For postponements one year or less before launch, the user shall reimburse NASA 5 percent of the user's flight price plus an occupancy fee according to the occupancy fee schedule in Appendix E to this subpart.

(ii) If the postponement of a flight causes the payload to be launched in a year for which a different price per flight has been established, the new price shall apply if it is higher than the originally contracted price.

(2) *Standby payloads.* (i) For flights postponed more than six months prior to the beginning of the negotiated one-year period, NASA shall renegotiate a new one-year period during which launch will occur. No additional fee will be imposed.

(ii) For flights postponed six months or less prior to the beginning of the negotiated one-year period, the user shall reimburse NASA 5 percent of the user's flight price plus an occupancy fee according to the occupancy fee schedule set forth in Appendix E to this subpart.

(3) Postponement fees are payable upon receipt of NASA's billing therefor.

(4) Flights postponed will henceforth be treated as newly scheduled launches according to the reimbursement schedule. The number of months prior to launch will be taken as the total number of months between the date postponement is elected and the new launch date. Short-term call-up options and associated fees shall apply.

(5) Minor delays (up to three days) caused by the users will not constitute a postponement. No fee will be charged for a minor delay.

(l) *Cancellations.* (1) Non-standby payloads. Users who cancel a flight more than one year before launch shall reimburse NASA 10 percent of the user's flight price. For a cancelled flight one year or less before launch, the user shall reimburse NASA 10 percent of the user's flight price plus an occupancy fee as set forth in Appendix E to this subpart.

(2) Standby payloads. (i) Users who cancel a flight more than six months prior to the beginning of the negotiated one-year period shall reimburse NASA 10 percent of the user's flight price.

(ii) For a flight cancelled six months or less prior to the beginning of the negotiated one-year period, the user shall reimburse NASA 10 percent of the user's flight price plus an occupancy fee as set forth in Appendix E to this subpart.

(3) Cancellation fees are payable upon receipt of NASA's billing therefor.

[42 FR 3829, Jan. 21, 1977, as amended at 49 FR 17736, Apr. 26, 1984]

§ 1214.103 Reflight guarantee.

(a) A fee for a reflight guarantee is included in the price charged the user. In consideration of that fee, NASA guarantees one reflight of:

(1) The launch and deployment of a free flying payload into a Shuttle compatible mission orbit if, through no fault of the user, the first launch and deployment attempt is unsuccessful and if the payload returns safely to earth or a second payload is provided by the user.

(2) The launch of an attached payload into its mission orbit if the first launch attempt is unsuccessful through no fault of the user, and if the payload returns safely to earth or a second payload is provided by the user.

(3) A launch of a Shuttle into a payload mission orbit for the purpose of retrieving a payload if the first retrieval attempt is unsuccessful through no fault of the user. This guarantee only applies if the payload is in a safe retrievable condition as determined by NASA.

(b) This reflight guarantee will not be applicable to payloads or upper stages placed into orbits other than the Shuttle mission orbit.

§ 1214.104 Patent and data rights.

(a) NASA will not acquire rights to inventions, patents or proprietary data privately funded by a user, or arising out of activities for which a user has reimbursed NASA under the policies set forth herein. However, in certain instances in which the NASA Administration has determined that activities may have a significant impact on the public health, safety or welfare, NASA may obtain assurances from the user that the results will be made available to the public on terms and conditions reasonable under the circumstances.

(b) The user will be required to furnish NASA with sufficient information to verify peaceful purposes and to insure Shuttle safety and NASA's and the U.S. Government's continued compliance with law and the Government's obligations.

§ 1214.105 Revisit and/or retrieval services.

These services will be priced on the basis of estimated costs. If a special dedicated Shuttle flight is required, the full dedicated price will be charged. If the user's retrieval requirement is such that it can be accomplished on a scheduled Shuttle flight, he will only pay for added mission planning, unique hardware or software, time on orbit, and other extra costs incurred by the revisit.

§ 1214.106 Damage to payload.

The price does not include a contingency or premium for damage that may be caused to a payload through the fault of the U.S. Government or its contractors. The U.S. Government, therefore, will assume no risk for damage or loss to the user's payload. The users will assume that risk or obtain insurance protecting themselves against that risk.

§ 1214.107 Responsibilities.

(a) *Headquarters officials.* (1) The NASA Comptroller, in coordination with the Associate Administrator for Space Flight will:

(i) Prescribe guidelines, procedures, and other instructions which are necessary for estimating costs and setting prices and purlishing them in the NASA Issuance System, and

(ii) Review and arrange for the billing of users.

(2) The Associate Administrator for Space Flight will arrange for:

(i) Developing estimates for costs and establishing prices in sufficient detail to reveal their basis and rationale.

(ii) Obtaining approval of the NASA Comptroller of such estimates and related information prior to the execution of any agreement, and

(iii) Reviewing of final billings to users prior to submission to the NASA Comptroller.

(b) *Field installation officials.* The Directors of Field Installations responsible for the STS operations will:

(1) Maintain and/or establish agency systems which are needed to identify costs in the manner prescribed by the NASA Comptroller.

(2) Compile financial records, reports, and related information, and

(3) Provide assistance to other NASA officials concerned with costs and related information.

APPENDIX A TO SUBPART 1214.1—COSTS FOR WHICH NASA SHALL BE REIMBURSED

Additive Costs. All additional costs, both direct and indirect, that the NASA has to incur above those it would otherwise have incurred had it not undertaken to meet non-NASA user requirements.

Total Operations Costs. Total Operations Costs include all direct and indirect costs, excluding costs composing the use charge. Such costs include direct program charges for manpower, expended hardware, refurbishment of hardware, spares, propellants, provisions, consumables and launch and recovery services. They also include a charge for program support, center overhead, and contract administration.

Use Charge. A charge in lieu of depreciation for use of facilities, support equipment and the Shuttle fleet.

Aggregate Costs. Aggregate costs are all reasonable costs which include the sum of the use charge and total operations costs.

APPENDIX B TO SUBPART 1214.1—STANDARD SHUTTLE SERVICES

Two standard mission destinations:
(1) 160 NM Altitude; 28.5° Inclination.
(2) 160 NM Altitude; 56.0° Inclination.
One day mission operations
Orbiter flight planning services
Transmission of payload data to compatible receiving stations
A three-man flight crew
On-orbit payload handling
Deployment of a free flyer
NASA support of payload design reviews
Prelaunch payload installation, verification and orbiter compatibility testing
NASA payload safety review

APPENDIX C TO SUBPART 1214.1—OPTIONAL SHUTTLE SERVICES

Revisit and retrieval
Use of Spacelab or other special equipment
Use of Mission Kits to extend basic orbiter capability
Use of Upper Stages

EVA services

Unique payload/orbiter integration and test

Payload mission planning services, other than for launch, deployment and entry phases

Additional time on-orbit

Payload data processing

Launch from Western Test Range

Two standard mission destinations are available from the Western Test Range site:

(1) 160 NM Altitude; 90.0° Inclination.

(2) 160 NM Altitude; 104.0° Inclination.

APPENDIX D TO SUBPART 1214.1—SHARED FLIGHT CHARGE

To calculate the cost of individual payloads transported on a flight shared with other payloads:

(1) Find the load factor for the payload by dividing the payload weight by the Shuttle capability for the desired inclination (Table in Figure 1).

(2) Find the load factor for the payload by dividing the payload length by 60 feet.

(3) Enter the curve (Figure 1) at the higher value obtained from steps 1 and 2 and read the Charge Factor (C_f)from the curve.

(4) Multiply the C_f value times the quoted price per dedicated flight. This will result in the price for the payload flight.

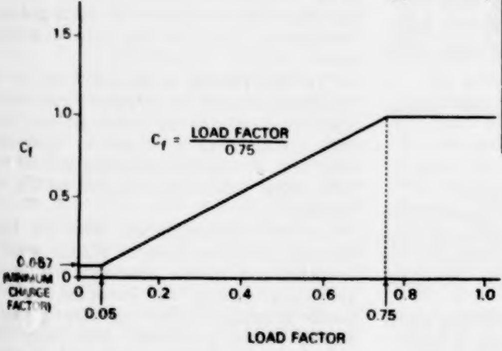
The price for each payload flight (Step 4) entitles the user to be provided a pro-rata share of the facilities available on board the standard Shuttle flight. For example, if the payload factor is 0.5, then the payload is entitled to 50% of power, cooling, and other services provided on the standard flight. Standard services required that exceed the pro-rata share will be an additional charge to the user based on the cost of the service provided.

For purposes of this attachment, payload weight includes a pro-rata share of all special equipment (e.g., spin tables and their controls) needed for the user's mission. Payload length includes a pro-rata share of the clearance length necessary to operate or deploy the payload, including the length of deployment mechanisms.

DETERMINATION OF CHARGE FACTOR (C_f) FOR 160 N.MI

PRICE = C_f × DEDICATED PRICE

$$\text{LOAD FACTOR} = \left\{ \begin{array}{c} \dfrac{\text{PAYLOAD WEIGHT, LBS}}{\text{SHUTTLE CAPABILITY}} \\ \dfrac{\text{PAYLOAD LENGTH, FT}}{60} \end{array} \right\} \text{WHICHEVER IS GREATER}$$



SHUTTLE CAPABILITY	
INCLINATION IN DEGREES	WEIGHT IN THOUSANDS OF POUNDS
28.5	65
56	57
90	37
104	30

FIG 1

APPENDIX E TO SUBPART 1214.1—OCCUPANCY FEE SCHEDULE

For a postponed or cancelled dedicated flight, the occupancy fee will be zero.

For a postponed or cancelled shared flight, the occupancy fee will be computed according to the computation instructions set forth below. If the computation results in an occupancy fee which is less than zero, the occupancy fee will be reset to zero.

For a postponed or cancelled shared flight one year or less, but more than six months before launch, the user shall reimburse NASA an occupancy fee of half the user's flight price less any adjusted reimbursements from other users who contract for the same flight subsequent to the postponement or cancellation date.

For a postponed or cancelled shared flight six months or less before launch, the user shall reimburse NASA an occupancy fee of 90% of the user's flight price less any adjusted reimbursements from other users who contract for the same flight subsequent to the postponement or cancellation date.

For a given shared flight, if the occupancy fee so computed would result in total adjusted reimbursements (exclusive of the 5% (10%) postponement (cancellation) fee) in excess of the price of a dedicated flight, the occupancy fee will be reduced in order to recover the price of a dedicated flight.

In the event that, as a result of the postponement or cancellation, the Shuttle is not launched at all for the intended flight, the occupancy fee will be zero.

(For purposes of this attachment, *adjusted reimbursements* is defined to be reimbursements assuming all users are non-U.S. Government.)

Subpart 1214.2—Reimbursement for Shuttle Services Provided to Civil U.S. Government Users and Foreign Users Who Have Made Substantial Investment in the STS Program

SOURCE: 42 FR 8631, Feb. 11, 1977, unless otherwise noted.

§ 1214.200 Scope.

This Subpart 1214.2 sets forth:

(a) The policy on reimbursement for Shuttle services which are provided by NASA to users (as defined in § 1214.201) under launch services agreements, and

(b) Responsibilities for putting such policy into effect and carrying it out.

§ 1214.201 Definition.

For the purpose of this subpart, the term *users* means:

(a) For all civil U.S. Government agencies who request Shuttle services from NASA, and

(b) Foreign users who have made substantial investment in the STS program, i.e., European Space Agency (ESA), ESA member or observer nations participating in Spacelab development, and Canada, when conducting experimental science or experimental applications missions with no near-term commercial implications.

§ 1214.202 Reimbursement policy.

(a) *Features of policy.* (1) All users will be charged on a fixed price basis; there will be no post-flight charges, except for prespecified optional services.

(2) The price will be based on estimated costs.

(3) The price will be held constant for flights in the first three years of Space Transportation System (STS) operations.

(4) Payments shall be escalated according to the Bureau of Labor Statistics Index for Compensation per hour, Total Private.

(5) Subsequent to the first three years, the price will be adjusted annually to insure that total operating costs are recovered over a twelve-year period.

(6) Pricing incentives are designed to maximize the proper utilization of the STS.

(b) *Dedicated flight reimbursements.* (1) For the purposes of this policy, a dedicated flight is one sold to a single user.

(2) The policy is established for two distinct phases of Shuttle operations. The first phase is through the third full fiscal year of Shuttle operations and the second phase consists of nine full fiscal years subsequent to the first phase.

(i) For a dedicated Shuttle flight during the first phase, NASA shall be reimbursed in an amount which is a pro-rata share of forecast additive costs averaged over the first phase of three years; however, the price shall not be less than a pro-rata share of forecast total operating costs averaged over both the first and second phases of the twelve year Shuttle operation period.

(ii) For a dedicated Shuttle flight during the second phase, NASA shall be reimbursed a pro-rata share of forecast total operating costs over both phases to insure that total operating costs are recovered over the twelve year period.

(iii) The definition of the costs are specified in this subpart are set forth in Appendix A to this subpart.

(iv) Subject to NASA approval, a dedicated flight user may apportion and assign STS services to other STS users provided they satisfy STS user requirements. The price of integrating additional payloads will be negotiated.

(v) A summary of standard Shuttle services included in the flight price is set forth in Appendix B to Subpart 1214.1.

(vi) The prices of optional Shuttle services are being developed and shall be set forth in the Shuttle Price Book which is being developed. A summary of the optional services is set forth in Appendix C to Subpart 1214.1.

(vii) For the user with an experimental, new use of space or first time use of space of great public value, the reimbursement to NASA for the dedicated, standard Shuttle flight in either the first or second phase shall be a pro-rata share of the average twelve year additive costs as estimated at the time of negotiations. Programs which qualify for this price will be determined by an STS Exceptional Program Selection Process. In all cases, the Administrator will be the selection official.

(viii) For dedicated flight users, NASA and the user will identify a desired launch date within a period of ninety days three years prior to flight. One year prior to the flight, a firm launch and payload delivery date will be identified by NASA. The firm launch date will be within the first sixty days of the original ninety day period. Launch will occur on the firmly scheduled launch date or within a period of thirty days thereafter. The payload must be ready to launch for the duration of that period.

(c) *Shared flight reimbursements.* (1) The price of a shared Shuttle flight will be a fraction of the dedicated Shuttle flight price. The fraction will be based on the length and weight of the payload and the mission destination at the time of contract negotiations. The formula for computing the fraction is set forth in Appendix D to Subpart 1214.1.

(2) For shared flight users, NASA and the user will identify a desired launch date three years prior to flight. Launch will occur within a period of ninety days, beginning on the desired launch date. One year prior to flight, a payload delivery date and a firm launch date will be coordinated among the shared flight users. This firm launch date will be within the first thirty days of the original ninety day period. The launch will occur on the firmly scheduled launch date or within a perod of sixty days thereafter. The payloads must be ready to launch for the duration of that period.

(3) A 20 percent discount on the standard flight price will be given to shared flight users who will fly on a space-available (standby) basis. NASA will provide launch services within a prenegotiated period of one year. Shared flight payloads must be flight deliverable to the launch site on the first day of the one year period and sustain that condition until delivery to the launch site. The user will be notified sixty days prior to the firmly scheduled launch date which has been established by NASA. At that time, NASA will also establish a payload delivery date. The payload must be available at the launch site on the assigned delivery date and ready to launch for a period of sixty days after the firmly scheduled launch date.

(d) *Small self-contained payloads.* Packages under 200 pounds and smaller than five cubic feet which require no Shuttle services (power, deployment, etc.), and are for R&D purposes, will be flown on a space-available basis during both phases of Shuttle operation. The price for this service will be negotiated based on size and weight, but will not exceed $10,000 in 1975 dollars. A minimum charge of $3,000 in 1975 dollars will be made. If Shuttle services are required, the price will be individually negotiated. Reimbursement to NASA will be made at the time the package is scheduled for flight.

(e) *Options.* (1) In order to allow the user greater flexibility in selecting a launch date, the user may purchase a "floating launch date" option. At the time of contract execution, the user will begin to make payments according to a 33 month reimbursement schedule for this launching. At any time during Phase 1 or 2, the user may exercise this option by informing NASA of his desired launch date for this option which will then be negotiated by NASA and the user. This launch date must be at least 33 months after the date of the first reimbursement payment. If the desired launch date is within one year of the date of declaration, the short term call-up option and associated fee will apply. If the desired launch is to occur in a year for which a new price per flight is in effect, the user will pay the new price. The fee for this option is 10 percent of the user's flight price in effect at the time of contract execution and is payable at that time. This fee will not be applied to the price of the user's flight.

(2) Options must be exercised for a flight by the end of the second phase of operations or the option fee will be retained by NASA.

(f) *Fixed price period and escalation.* (1) The price will remain constant for flights during the first phase of Shuttle operations. For flights during the second phase, the price wil be adjusted on a yearly basis, if necessary, to assure revovery of total operating costs over a twelve-year period. These adjusted prices will be applicable only to agreements executed after the adjustment is made.

(2) Shuttle services for both phases will be contracted on a fixed price basis. The payments in the contract will be escalated to the time of the payment using the Bureau of Labor Statistics Index for Compensation per hour, Total Private.

(g) *Earnest money.* Earnest money shall be paid to NASA prior to NASA's accepting a launch reservation. The earnest money required shall be $100,000 per payload; however, if the payload is a small self-contained payload, the earnest money shall be $500.00 per payload. The earnest money shall be applied to the first payment for each payload made by the customer, or shall be retained by NASA if a launch services agreement is not signed.

(h) *Reimbursement schedule.* (1) Reimbursement shall be made in accordance with the reimbursement schedule contained in this subsection. No charges shall be made after the flight, except as negotiated in the contract for prespecified extra services. Those users who contract for Shuttle services less than three years before the desired launch date will be accommodated and will pay on an accelerated basis according to the reimbursement schedule.

(2) *Standby payloads.* (i) Before the establishment of a firmly scheduled launch date, the number of months before launch will be computed assuming a launch date at the mid-point of the designated one-year period.

(ii) Once the firmly scheduled launch date is established, the user shall reimburse NASA to make his payments current according to the reimbursement schedule.

(3) *Rembursement schedule.*

[Percent of price]

Number of months before launch flight is scheduled	Months prior to scheduled launch date					
	33	27	21	15	9	3
33 months or more	10	10	17	17	23	23
27 to 32 months		21	17	17	23	23
21 to 26 months			40	17	23	23
15 to 20 months				61	23	23
9 to 14 months					90	23
3 to 8 months						

This schedule holds unless there are offsetting advantages to the U.S. Government of an accelerated launch schedule.

(4) Contracts for Shuttle services made one year or less before a flight and up to three months before a flight will be made on a space-available basis unless short term call-up option is elected.

(i) *Short term call-up option.* (1) For flights contracted on year or less before launch, but not less than three months before launch, short term call-up will be provided to dedicated flight users at the dedicated flight prices according to the reimbursement schedule.

(2) For dedicated flight users requiring short term call-up flights less than three months before launch, NASA will provide STS launch services on a space-available basis. NASA shall be

reimbursed the dedication flight price according to the reimbursement schedule plus short term call-up additional costs. The additional costs will be based on estimated costs to be incurred.

(3) For shared flights contracted one year or less before launch, but more than six months before launch, users may elect the short term call-up option. The user shall reimburse NASA the standard shared flight price according to the reimbursement schedule plus a load factor-recovery fee. The load factor-recovery fee is half the difference between a dedicated flight price and the user's shared flight price or the difference between a dedicated flight price and the total adjusted reimbursements from all shared users, whichever is less.

(4) For shared flights contracted six months or less before launch, but more than three months before launch, users may elect the short term call-up option. The user shall reimburse NASA the standard share flight price according to the reimbursement schedule plus a load factor-recovery fee which is the difference between a dedicated flight price and the total adjusted reimbursement from all shared flight users.

(5) Shared flights contracted three months or less before launch will be flown on a space-available basis. NASA shall be reimbursed the shared flight price according to the reimbursement schedule plus short term call-up additional costs. These additional charges will be based on estimated costs to be incurred.

(6) For the purposes of this paragraph, *adjusted reimbursements* is defined to be reimbursements assuming all shared users are among those defined in § 1214.201.

(7) The load factor-recovery fee will never be less than zero.

(8) The load factor-recovery fee is payable upon receipt of NASA's billing therefor.

(j) *Accelerated launches.* For users who reschedule a launch so that it occurs earlier than the planned launch, the user will pay on an accelerated reimbursement schedule. The user will reimburse NASA to make his payments current on the new accelerated reimbursement schedule. If the time from notification of acceleration is less than one year from the new launch date, short term call-up reimbursements will also apply.

(k) *Postponements*—(1) *Non-standby payloads.* (i) A user can postpone a flight of his payload one time with no additional charge if postponement occurs more than one year before launch. For subsequent postponed flights more than one year before launch, the user shall reimburse NASA a postonement fee of 5 percent of the user's flight price. For postponements one year or less before launch, the user shall reimburse NASA 5 percent of the user's flight price plus an occupancy fee according to the occupancy fee schedule in Appendix B.

(ii) If the postponement of a flight causes the payload to be launched in a year for which a different price per flight has been established, the new price shall apply if it is higher than the originally contracted price.

(2) *Standby payloads.* (i) For flights postponed more than six months prior to the beginning of the negotiated one-year period, NASA shall renegotiate a new one-year period during which launch will occur. No additional fee will be imposed.

(ii) For flights postponed six months or less prior to the beginning of the negotiated one-year period, the user shall reimburse NASA 5 percent of the user's flight price plus an occupancy fee according to the occupancy fee schedule set forth in Appendix B.

(3) Postponement fees are payable upon receipt of NASA's billing therefor.

(4) Flights postponed will henceforth be treated as newly scheduled launches according to the reimbursement schedule. The number of months prior to launch will be taken as the total number or months between the date postponement is elected and the new launch date. Short term call-up options and associated fees shall apply.

(5) Minor delays (up to three days) caused by the users will not constitute a postponement. No fee will be charged for a minor delay.

(l) *Cancellations*—(1) *Non-standby payloads.* Users who cancel a flight more than one year before launch shall reimburse NASA 10 percent of the user's flight price. For a cancelled flight one year or less before launch, the user shall reimburse NASA 10 percent of the user's flight price plus an occupancy fee as set forth in Appendix B.

(2) *Standby payloads.* (i) Users who cancel a flight more than six months prior to the beginning of the negotiated one-year period shall reimburse NASA 10 percent of the user's flight price.

(ii) For a flight cancelled six months or less prior to the beginning of the negotiated one-year period, the user shall reimburse NASA 10 percent of the user's flight price plus an occupancy fee as set forth in Appendix B.

(3) Cancellation fees are payable upon receipt of NASA's billing therefor.

[42 FR 8631, Feb. 11, 1977, as amended at 49 FR 17736, Apr. 25, 1984]

§ 1214.203 Optional reflight guarantee.

(a) If reflight insurance is purchased from NASA, NASA guarantees one reflight of:

(1) The launch and development of a free flying payload into a Shuttle compatible mission orbit if, through no fault of the user, the first launch and deployment attempt is unsuccessful and if the payload returns safely to earth or a second payload is provided by the user.

(2) The launch of an attached payload into its mission orbit if the first launch attempt is unsuccessful through no fault of the user, and if the payload returns safely to earth or a second payload is provided by the user.

(3) A launch of a Shuttle into a payload mission orbit for the purpose of retrieving a payload if the first retrieval attempt is unsuccessful through no fault of the user. This guarantee only applies if the payload is in a safe retrievable condition as determined by NASA.

(b) Reflight insurance is not applicable to payloads or upper stages placed into orbits other than the Shuttle mission orbit.

§ 1214.204 Patent and data rights.

(a) When accommodating missions under this subpart, i.e., experimental science or experimental applications missions for ESA, ESA member states or Canada with no near-term commercial implications, NASA will obtain for U.S. Governmental purposes rights to inventions, patents and data resulting from such missions, subject to the user's retention of the rights to first publication of the data for a specified period of time.

(b) The user will be required to furnish NASA with sufficient information to verify peaceful purposes and to insure Shuttle safety and NASA's and the U.S. Government's continued compliance with law and the Government's obligations.

§ 1214.205 Revisit and/or retrieval services.

These services will be priced on the basis of estimated costs. If a special dedicated Shuttle flight is required, the full dedicated price will be charged. If the user's retrieval requirement is such that it can be accomplished on a scheduled Shuttle flight, he will only pay for added mission planning, unique hardware or software, time on orbit, and other extra costs incurred by the revisit.

§ 1214.206 Damage to payload.

The price does not include a contingency or premium for damage that may be caused to a payload through the fault of the U.S. Government or its contractors. The U.S. Government, therefore, will assume no risk for damage or loss to the user's payload. The users will assume that risk or obtain insurance protecting themselves against that risk.

§ 1214.207 Responsibilities.

(a) *Headquarters officials.* (1) The NASA Comptroller, in coordination with the Associate Administrator for Space Flight will:

(i) Prescribe guidelines, procedures, and other instructions which are necessary for estimating costs and setting prices and publishing them in the NASA Issuance System, and

(ii) Review and arrange for the billing of users.

(2) The Associate Administrator for Space Flight will arrange for:

(i) Developing estimates for costs and establishing prices in sufficient detail to reveal their basis and rationale.

(ii) Obtaining approval of the NASA Comptroller of such estimates and related information prior to the execution of any agreement, and

(iii) Reviewing of final billings to users prior to submission to the NASA Comptroller.

(b) *Field installation officials.* The Directors of Field Installations responsible for the STS operations will:

(1) Maintain and/or establish agency systems which are needed to identify costs in the manner prescribed by the NASA Comptroller,

(2) Compile financial records, reports, and related information, and

(3) Provide assistance to other NASA officials concerned with costs and related information.

APPENDIX A TO SUBPART 1214.2—COSTS FOR WHICH NASA SHALL BE REIMBURSED

Total Operating Costs. Total Operating Costs include all direct and indirect costs, excluding costs of composing the use charge. Such costs include direct program charges for manpower, expended hardware, refurbishment of hardware, spares, propellants, provisions, consumables and launch and recovery services. They also include a charge for program support, center overhead and contract administration.

APPENDIX B TO SUBPART 1214.2—OCCUPANCY FEE SCHEDULE

For a postponed or cancelled dedicated flight, the occupancy fee will be zero.

For a postponed or cancelled shared flight, the occupancy fee will be computed according to the computation instructions set forth below. If the computation results in an occupancy fee which is less than zero, the occupancy fee will be reset to zero.

For a postponed or cancelled shared flight one year or less, but more than six months before launch, the user shall reimburse NASA an occupancy fee of half the user's flight price less any adjusted reimbursements from other users who contract for the same flight subsequent to the postponement or cancellation date.

For a postponed or cancelled shared flight six months or less before launch, the user shall reimburse NASA an occupancy fee of 90% of the user's flight price less any adjusted reimbursements from other users who contract for the same flight subsequent to the postponement or cancellation date.

For a given shared flight, if the occupancy fee so computed would result in total adjusted reimbursements (exclusive of the 5% (10%) postponement (cancellation) fee) in excess of the price of a dedicated flight, the occupancy fee will be reduced in order to recover the price of a dedicated flight.

In the event that, as a result of the postponement or cancellation, the Shuttle is not launched at all for the intended flight, the occupancy fee will be zero.

For purposes of this attachment, *adjusted reimbursements* is defined to be reimbursements assuming all users are among those defined in § 1214.201.

Subpart 1214.3—Payload Specialists for Space Transportation System (STS) Missions

SOURCE: 54 FR 48587, Nov. 24, 1989, unless otherwise noted.

§ 1214.300 Scope.

(a) This revision of subpart 1214.3 redefines the title of payload specialist and sets forth NASA's policy on and process for the determination of need, selection, and utilization of payload specialists and additional mission specialists to be assigned to a Space Transportation System (STS) flight in addition to the standard NASA flight crew.

(b) This subpart does not apply to the selection of crew for the Space Station Freedom. It is recognized that the Space Station has unique requirements regarding its crew and that a separate, specifically tailored policy will need to be developed in the future.

§ 1214.301 Definitions.

(a) *Payload specialists.* Individuals other than NASA astronauts (commanders, pilots, and mission specialists), whose presence is required on board the Space Shuttle to perform specialized functions with respect to operation of one or more payloads or other essential mission activities.

(b) *NASA or NASA-related payload.* A specific complement of instruments, space equipment, and support hardware, developed by a NASA Program Office or by another party with which NASA has a shared interest, and carried into space to accomplish a mission or discrete activity in space.

(c) *Mission.* The performance of a coherent set of investigations or operations in space to achieve program goals. A single mission might require more than one flight or more than one mission might be accomplished on a single flight.

(d) *Mission manager.* The official responsible for the implementation of the payload portion of an STS flight(s).

(e) *Mission specialist.* A career NASA astronaut trained and skilled in the operation of STS systems related to payload operations and thoroughly familiar with the operational requirements and objectives of the payloads with which the mission specialist will fly. The mission specialist, when designated for a flight, will participate in the planning of the mission and will be responsible for the coordination of overall payload/STS interaction. The mission specialist will direct the allocation of STS and crew resources to the accomplishment of the combined payload objectives during the payload operations phase of the flight in accordance with the approved flight plan.

(f) *Investigator Working Group (IWG).* A group composed of the Principal Investigators, or their representatives, whose primary purpose is facilitating or coordinating the development and execution of the operational plans of an approved NASA program or reporting the progress thereof.

(g) *Payload sponsor.* For NASA and NASA-related payloads the payload sponsor is the Associate Administrator of the sponsoring Program Office whose responsibilities are most closely related to the particular scientific or engineering discipline associated with a payload. For all other payloads, the payload sponsor is identified by the Associate Administrator who contracts with the agency or organization, whether foreign or domestic, private-sector or governmental, to fly a payload on the STS.

(h) *Unique requirements.* The need for a highly specialized or unusual technical or professional background or the need for instrument operations requiring a highly specialized or unusual background that is not likely to be found in the group of mission specialists or cannot be attained in a reasonable training period.

§ 1214.302 Background.

(a) The Space Transportation System (STS) has been developed to expand the Nation's capabilities to utilize the unique environment of space. It provides opportunity for individuals other than career astronauts to participate as onboard members of the flight crew under specified conditions. The purpose of such participation by these individuals is to ensure the achievement of the payload or mission-related objectives.

(b) The STS will provide these additional crew members with a habitable working environment and support services in such a way as to require a minimum of dedicated space flight training, allowing them to concentrate their efforts on the accomplishment of their scientific, technical, or mission objectives.

§ 1214.303 Policy.

(a) *General.* (1) The Challenger accident marked a major change in the U.S. outlook and policies with respect to the flight of other than NASA astronauts. NASA and interested external parties, domestic and international, must re-examine previous understandings, expectations, and commitments regarding flight opportunities in light of the new policies now being enunciated.

(2) NASA policies and their implementation recognize that:

(i) Every flight of the Shuttle involves risks;

(ii) Flight opportunities will now generally be limited to professional NASA astronauts and payload specialists essential for mission requirements; and

(iii) Top priority must be given to:

(A) Establishing, proving, and maintaining the reliability and safety of the Shuttle system;

(B) Timely and efficient reduction of the backlog of high priority scientific and national security missions; and maximum utilization of the Shuttle capacity for primary and secondary payloads that require transportation to or from orbit by the Space Shuttle.

(3) All Shuttle flights will be planned with a minimum NASA crew of five astronauts (commander, pilot, and three mission specialists). When payload or other mission requirements define a need and operational constraints permit, the crew size can be increased to a maximum of seven. Any such additional crew members must be identified at least 12 months before flight and be available for crew integration at 6 months.

(4) NASA policy and terminology are revised to recognize two categories of persons other than NASA astronauts, each of which requires separate policy treatment. They are:

(i) *Payload specialists,* redefined to refer to persons other than NASA astronauts (commanders, pilots, and mission specialists), whose presence is required onboard the Space Shuttle to perform specialized functions with respect to operation of one or more payloads or other essential mission activities.

(ii) *Space flight participants,* defined to refer to persons whose presence onboard the Space Shuttle is *not* required for operation of payloads or for other essential mission activities, but is determined by the Administrator of NASA to contribute to other approved NASA objectives or to be in the national interest.

(b) *Payload specialists.* Payload specialists may be added to Shuttle crews when more than the minimum crew size of five is needed and unique requirements are involved. In the case of foreign-sponsored missions and payloads, the need and requirements for payload specialists will be negotiated and mutually agreed between the foreign sponsors and NASA. The selection process for additional crew members to meet approved requirements will first give consideration to qualified NASA mission specialists. When payload specialists are required, they will be nominated by the appropriate NASA, foreign, or other designated payload sponsor. In the case of NASA or NASA-related payloads, the nominations will be based on the recommendations of the appropriate Investigator Working Group (IWG).

(c) *Space flight participants.* NASA remains committed to the long-term goal of providing space flight opportunities for persons outside the professional categories of NASA astronauts and payload specialists when this contributes to approved NASA objectives or is determined to be in the national interest. However, NASA is devoting its attention to proving the Shuttle system's capablity for safe, reliable operation and to reducing the backlog of high priority missions. Accordingly, flight opportunities for space flight participants are not available at this time. NASA will assess Shuttle operations and mission and payload requirements on an annual basis to determine when it can begin to allocate and assign space flight opportunities for future space flight participants, consistent with safety and mission considerations. When NASA determines that a flight opportunity is available for a space flight participant, first priority will be given to a "teacher in space," in fulfillment of space education plans.

§ 1214.304 Process.

(a) Determining the need for additional crew members. The payload sponsor will be responsible for recommending the number of addition crew members and for establishing the technical or scientific need, the selection criteria, uniqueness of qualifications, the proposed training, and other requirements for the additional crew members. The payload sponsor's requirements for additional crew members, their qualifications, and the proposed duration for training will be reviewed with and concurred in by the Associate Administrator for Space Flight.

(b) Selection of additional crew members for NASA and NASA-related payloads. After the requirement for additional crew members has been established, the IWG will be tasked by the payload sponsor to commence the selection process. The IWG review process will include the participation of a senior astronaut from the Flight Crew Operations Directorate at the Johnson Space Center who will provide operational and applicant suitability criteria.

(1) Prior to the payload sponsor's recommendation for additional crew members and at his/her direction, the IWG will have studied the requirements of the selected investigations, the number, qualifications, training requirements and other requirements of payload specialists, and backups necessary to support the payload objectives, and made recommendations to the payload sponsor.

(2) Members of the mission specialist cadre will be considered first. The payload mission manager, on behalf of the IWG, will convey the selection criteria for the proposed additional crew members to the Chief, Astronaut Office. The IWG, the mission manager, and the Astronaut Office will coordinate the review of the proposed candidates and the mission manager will forward recommendations to the payload sponsor. Recommendations from the payload sponsor will be submitted to the Associate Administrator for Space Flight for approval.

(3) If mission specialists meeting the requirements cannot be provided because of the uniqueness of requirements or impracticability of the resultant training obligation, or if backup payload specialists are required, the IWG may then solicit candidate payload specialists from outside the career astronaut corps. The solicitation will require, as a minimum, that a summary of professional qualifications be submitted to the IWG. In addition, a medical history, and the results of the physical examination described in paragraph (b)(3)(iii) of this section will be required. The IWG will be responsible for:

(i) Establishing professional and operational criteria for payload specialists for specific payloads. The criteria will include willingness on the part of the candidate to accept the applicable provisions of § 1214.306 and satisfactory completion of a background investigation conducted to NASA's standards, as determined by the Director, NASA Security Office.

(ii) Evaluating all candidates using the criteria established.

(iii) Determining which candidate payload specialists, who meet the NASA Class III Space Flight Medical Selection Standards, are deemed best professionally qualified. (The preselection phases of the medical examination will be conducted at Johnson Space Center by certified examiners approved by the Director, Life Sciences Division, NASA Headquarters).

(iv) Submitting its recommendations for payload specialists through the mission manager to the payload sponsor who in turn will determine final recommendations which will be reviewed with and concurred in by the Associate Administrator for Space Flight.

(4) The payload sponsor and the Associate Administrator for Space Flight will advise the Administrator of the payload specialist selections.

(c) Selection of additional crew members for foreign payloads. The need and requirements for payload specialists will be negotiated and mutually agreed to between the foreign sponsor and NASA. This negotiating process will include the participation of a senior astronaut from the Flight Crew Operations Directorate at the Johnson Space Center who will provide operational and applicant suitability criteria. After agreement is reached, the payload sponsor will initiate the selection process. Subject to the negotiated agreement, subsequent steps in the process will be similar to those described in § 1214.304(b) modified as follows:

(1) The IWG functions will be performed by a selection committee or other procedure designated by the payload sponsor.

(2) The payload sponsor will designate an individual to perform the mission manager functions.

(3) The committee or procedure in paragraph (c)(1) of this section and the person named in paragraph (c)(2) of this section will be established during the negotiations between the foreign sponsor and NASA, consistent with the specific circumstances.

(4) The payload sponsor will also be responsible for submission to NASA by an appropriate authority of written assurance that an inquiry has been made into the recommended payload specialist's background and suitability on the basis of standards similar to those applied to NASA payload specialist candidates and a statement by the selected candidate asserting a willingness to accept the applicable provisions of § 1214.306. These written assurances must be received and accepted by NASA before selection and before any NASA training can begin.

(d) Selection of additional crew members for other payloads. After the request for additional crew members is approved, the payload sponsor will commence the selection process. The payload sponsor review process will include the participation of a senior astronaut from the Flight Crew Operations Directorate at the Johnson Space Center who will provide operational and applicant suitability criteria.

(1) The payload sponsor will first consider members of the mission specialist cadre. A representative of the payload sponsor selection committee will convey the selection criteria for the proposed payload specialists to the Chief, Astronaut Office, and coordinate on the recommendations for mission specialists to satisfy the requirements. The recommendations will be submitted to the Associate Administrator for Space Flight for approval who will then advise the Administrator of the selections.

(2) If mission specialists meeting the requirements cannot be provided because of the uniqueness of qualifications or impracticability of the resultant training obligation, the payload sponsor selection committee, with concurrence from the payload sponsor and the Associate Administrator for Space Flight, may then consider other candidate payload specialists. The payload sponsor will be responsible for:

(i) Establishing professional and operational criteria for payload specialists for specific payloads. The criteria will include willingness on the part of the candidate to accept the applicable provisions of § 1214.306 and satisfactory completion of a background investigation conducted to NASA's standards, as determined by the Director, NASA Security Office.

(ii) Evaluating all candidates using the criteria established.

(iii) Determining which candidate payload specialists, who meet the NASA Class III Space Flight Medical Selection Standards, are deemed best professionally qualified. (The preselection phases of the medical examination will be conducted at the Johnson Space Center by certified examiners approved by the Director, Life Sciences Division, NASA Headquarters).

(iv) Submitting its recommendations for payload specialist selection to the Associate Administrator for Space Flight for approval.

(e) Preflight activities for additional crew members. Mission specialists serving as additional crew for the payload, once selected, will be primarily responsible to the mission manager who, together with the IWG (or comparable body designated by the payload sponsor) and the Director, Flight Crew Operations, will determine the integrated training and work schedules as appropriate to the areas of responsibilities outlined in the following paragraphs.

(1) The IWG for NASA and NASA-related payloads or the Payload Sponsor for all other payloads is responsible for defining the training necessary for payload elements within its cognizance. The mission manager is responsible for the total integrated payload training and will assist the IWG as necessary in carrying out the defined training activities.

(2) The Director, Flight Crew Operations, is responsible for establishing the training requirements for payload specialists on Orbiter, Spacelab, and STS-provided payload support systems as appropriate. In order to enhance the crew integration process, the additional crew members (payload specialists and additional mission specialists) will be based at the Johnson Space Center 6 months prior to flight, unless otherwise agreed between the payload sponsor and the Director, Flight Crew Operations, Johnson Space Center.

(3) The payload specialists must be certified for flight by the Director, Flight Crew Operations, upon satisfac-

tory completion of all required training and demonstrated performance of assigned tasks. Certification of the payload specialist's readiness for flight will be made to the payload mission manager and will include an assessment by the crew commander of the payload specialist's suitability for space flight.

(4) The mission manager is responsible for verifying to the payload sponsor that all crew members are properly trained for in-flight payload operations.

(i) The medical program for payload specialists will be continued during the preflight period in accordance with the NASA Class III Space Flight Medical Selection Standards.

(ii) If, during the preflight period, the number of additional crew members is reduced to fewer than that agreed to, or an additional crew member does not meet the certification requirements, the necessary reprocessing may be initiated to provide replacements consistent with the above described selection process and the STS training requirements.

(f) Designation of primary and backup payload specialists (when required). At an appropriate time designated by the mission manager (not later than 9 months prior to flight), the IWG for NASA and NASA-related payloads or payload sponsor for all other payloads will recommend which payload specialists should be designated as prime and which as backup. However, in cases where mission specialists have been selected for the payload specialist position(s), they will be considered as primary at the time of selection. The recommendations will be forwarded by the mission manager to the Program Office which will review the recommendations and forward them to the Associate Administrator for Space Flight for concurrence. The payload sponsor and the Associate Administrator for Space Flight will advise the Administrator of the selections.

(g) Effective date. The described selection process will apply to all STS missions for which selections have not been approved prior to December 31, 1988.

§ 1214.305 Payload specialist responsibilities.

(a) Relationship with flight crew. The crew commander has overall responsibility for crew integration and the safe and successful conduct of the mission. With respect to crew and vehicle safety, the commander has ultimate responsibility and authority for all assigned crew duties. The payload specialist is responsible to the authority of the commander and operates in compliance with mission rules and Payload Operation Control Center directives. Payload specialists are expected to operate as an integral part of the crew and will participate in crew activities as specified by the crew commander.

(b) Operation of payload elements. The payload specialist will be responsible for the operation of the assigned payload elements. Onboard decisions concerning assigned payload operations will be made by the payload specialist. A payload specialist may be designated to resolve conflicts between the payload elements and approve such deviation from the flight plan as may arise from equipment failures or STS factors. In the instance of STS factors, the mission specialist will present the available options for the payload-related decisions by the payload specialist.

(c) Operation of STS equipment. The payload specialist will be responsible for knowing how to operate certain Obiter systems, such as hatches, food and hygiene systems, and for proficiency in those normal and emergency procedures which are required for safe crew operations, including emergency egress and bail out. The responsibility for on-orbit management of Orbiter systems and attached payload support systems and for extravehicular activity and payload manipulation with the Remote Manipulator System will rest with the NASA flight crew. The NASA flight crew will operate Orbiter systems and standard payload support systems, such as Spacelab and Internal Upper Stage systems. With approval of the commander, payload specialists may operate payload support systems which have an extensive interface with the payload.

§ 1214.306 Payload specialist relationship with sponsoring institutions.

Specialists who are not U.S. Government employees must enter into a contractual or other arrangement establishing an obligatory relationship with an institution participating in the payload as designated by the payload sponsor prior to selection and before entering into training at a NASA installation or NASA-designated location. Payload specialists who are not otherwise U.S. Government employees will not become U.S. Government employees by virtue of being selected as a payload specialist. Except as specified in the following paragraphs of this section, NASA will not enter into any direct contractual or other arrangement with individual payload specialists. Any exception must be approved by the NASA Administrator.

(a) Payload specialists who are not citizens of the United States will be required to enter into an agreement with NASA in which they agree to accept and be governed by specified standards of conduct. Any such agreement will be signed on behalf of NASA by the NASA General Counsel or designee.

(b) Payload specialists who are citizens of the United States and who are not employees of the U.S. Government, will be required to enter into an agreement with NASA in which they agree to accept and be governed by specified standards of conduct. Any such agreement will be signed on behalf of NASA by the NASA General Counsel or designee.

(c) Payload specialists who are employed by a branch, department, or agency of the U.S. Government other than NASA may (pursuant to the exercise of judgment by the NASA General Counsel) be required to enter into an agreement with NASA to accept and be governed by specified standards of conduct. Any such agreement will be signed on behalf of NASA by the NASA General Counsel or designee.

Subpart 1214.5 Mission Critical Space System Personnel Reliability Program

SOURCE: 55 FR 53289, Dec. 28, 1990, unless otherwise noted.

§ 1214.500 Scope.

This subpart 1214.5 establishes a program designed to ensure that personnel assigned to mission critical positions/duties meet the screening requirements outlined in § 1214.504 of this part.

§ 1214.501 Applicability.

(a) This regulation applies to civil service and contractor personnel at NASA Headquarters and field installations who work in activities that are vital to the safety and success of mission critical space systems.

(b) The provisions of this regulation apply to all civil service and contractor personnel assigned to mission critical positions/duties with the exception of the personnel addressed in § 1214.501(c) of this part. This includes command and decision making personnel as well as technicians.

(c) This regulation does not include flight crew or payload specialists. They are covered by NASA Management Instruction (NMI) 33304 (14 CFR part 1214, subpart 1214.11), "NASA Astronaut Candidate Recruitment and Selection Program."

(d) This regulation applies to Space Station Freedom International Partners in that the certification requirements in § 1214.505(f) of this part apply to foreign personnel in mission critical positions/duties.

§ 1214.502 Definitions.

(a) *Mission Critical Space Systems.* The Space Shuttle and other critical space systems, including Space Station Freedom, designated Expendable Launch Vehicles (ELV's), designated payloads, Shuttle Carrier Aircraft and other designated resources that provide access to space. The Director of each NASA Installation will designate areas associated with these systems that are mission critical space systems areas.

(b) *Mission Critical Positions/Duties.* Positions/duties which, if performed in a faulty, negligent, or malicious manner, could jeopardize mission critical space systems and/or delay a mission. While this regulation establishes suitability screening requirements which, if met, will allow unescorted access to mission critical space areas, compliance with the requirements does not authorize unescorted access to classified areas by Personnel Reliability Program (PRP) personnel who do not have security clearances.

(c) *Medical Authority.* A NASA civil service or contract physician/psychiatrist responsible for maintaining medical records, providing results of medical evaluations, and interpreting evaluations as they relate to reliable performance of mission-critical duties. The medical authority will coordinate evaluations with the investigatory authority.

(d) *Investigatory Authority.* A NASA civil service or contract individual responsible for reviewing court, law enforcement (Civil, DOD, NASA, other Federal), and other official records and NASA screening plans/procedures records to provide evaluations, recommendations, and guidance to NASA organizations, supervisors, and PRP adjudicators on issuing, denying, or revoking eligibility for mission critical positions/duties.

(e) *Certification.* The determination that an employee assigned to duties as described in § 1214.505 of this part, is qualified to perform those duties, and that this employee has been found reliable in accordance with the adjudication guidelines set forth in Attachment B of NMI 8610.13.[1]

§ 1214.503 Policy.

(a) The Space Shuttle and the Space Station Freedom are included in the NASA National Resource Protection Program as delineated in NMI 8610.22, "National Resource Protection Program."[2] The Space Shuttle and the Space Station Freedom provide a capability to support a wide range of scientific applications and commercial, defense, and international uses. Since they will contribute significantly to ensuring a scientifically, technologically, and economically strong and secure nation, program reliability, operational and safety considerations require that stringent measures be taken to provide for the protection of the systems. In addition to the Space Shuttle and the Space Station Freedom, designated ELV's, designated payloads, Shuttle Carrier Aircraft and other designated resources which provide the same critical access to space or the ability to accomplish critical objectives in space are considered to constitute valued national resources.

(b) Measures to ensure this protection are:

(1) Special physical security provisions as provided in NMI 8610.22.[3]

(2) Procedures to ensure that personnel assigned to mission critical positions/duties meet screening requirements, as set forth in § 1214.504 of this part prior to unescorted access to areas where mission critical space systems are located.

§ 1214.504 Screening requirements.

(a) Only those persons who are certified under the PRP will have unescorted access to mission critical space systems areas, be assigned to, employed in, or retained in mission critical positions/duties. While this regulation provides for unescorted access to mission critical space systems areas, it does not preclude the need for escorting of PRP personnel who do not have security clearances in classified areas. The certification will be based on an evaluation of screening data which is to be undertaken by a trained evaluator using evaluation guidance and criteria contained in Federal Personnel Manual (FPM) chapter 731 and Attachment B (Adjudication Guidelines) of NMI 8610.13.[4] The need for impartial and consistent evaluation of data based on a set of standards is considered paramount to the successful implementation of this program.

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[1] Copies may be obtained from NASA Headquarters (Code NA-2), Washington, DC 20546.

[2] See footnote 1 to § 1214.502(e).

[3] See footnote 1 to § 1214.502(e).

[4] See footnote 1 to § 1214.502(e).

(b) Determination of suitability for assignment to mission critical positions/duties will be made on the basis of the following criteria:

(1) Supervisory nomination (per requirements of § 1214.505(c) of this part) and assurance of ability to perform mission critical duties as evidenced by performance during training and while on the job.

(2) Medical evaluation (for cause only) by NASA designated medical/psychiatric authority consistent with:

(i) The guidelines and requirements of the NASA Occupational Health Division as required to ensure adequate health for competent and reliable performance; and

(ii) Information developed by testing, review and other screening regarding an individual's health, drug or alcohol abuse, or other factors which may reflect adversely on his or her cognizance, judgement, and ability to act reliably. Such information shall be considered "cause" within the meaning of this subsection.

(iii) All information obtained by medical or Employee Assistance Program evaluation is subject to federal and state statutes and regulations pertaining to the privacy and confidentiality of patient/client information.

(3) Evaluation by a NASA-designated investigatory authority including a review of the results of any National Agency Check (including a name check of the Federal Bureau of Investigation (FBI) fingerprint records) completed within the past 5 years. When the National Agency Check indicates that a more extensive investigation has been completed, the results of that investigation will also be reviewed.

(4) Local agency checks as appropriate.

(5) A review of the PRP candidate's personnel employment records.

(6) A review of the Inspector General case files.

(c) Information acquired during the screening process will be protected in a manner consistent with the provisions of the Privacy Act and other pertinent laws and regulations.

§ 1214.505 Program implementation.

(a) The Director of each NASA Installation will designate mission critical space systems areas.

(b) NASA installations will identify positions/duties subject to this regulation and will identify all civil service and contractor personnel assigned to these positions/duties. The number of persons so identified must be the absolute minimum necessary to meet operational requirements.

(c) Each NASA installation to which this regulation is applicable will establish:

(1) A suitability certification system including a designated certifying official to ensure that the screening requirements of this regulation are met. Adjudication Guidelines (Attachment B of NMI 8610.13)[5] provides a baseline for each installation to consider in formulating a certification approach. The screening/evaluation plans and procedures formulated at each installation will be approved by Headquarters (Office of Safety and Mission Quality (Code Q) and appropriate Program Associate Administrators) before implementation.

(2) A management review process to validate the objectivity of individual suitability certification determinations and to ensure that reassignments or other personnel actions taken pursuant to this regulation are fair and in consonance with applicable personnel policies and procedures.

(3) An adequate training program for certifying officials, supervisors, adjudicators, and other installation personnel approved by Headquarters Code Q before implementation.

(4) Each NASA installation will maintain a roster of installation adjudicators. Directors of the Installations will approve appointment of adjudicators.

(d) Supervisors will:

(1) Review for reliability and nominate personnel whose duties require certification under the PRP.

(2) Certify that the PRP candidate holds current licenses, skill training certificates, and other documentation

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[5] See footnote 1 to § 1214.502(e).

issued as required by applicable directives.

(3) Brief PRP candidates and rebrief PRP personnel on the needs and intent of the PRP.

(4) Monitor and continually evaluate personnel for steady reliable performance and notify the certifying official if changes occur which may compromise the safety and reliability of mission critical space systems.

(e) NASA Headquarters Office of Safety and Mission Quality (Code Q) will act as the Office of Primary Responsibility (OPR) for PRP policy and oversight (periodic review). The certification of Headquarters personnel will be carried out by the Office of Headquarters Operations (Code D) in accordance with § 1214.505 of this part.

(f) Foreign representatives requiring access to mission critical space systems or having the need to assume mission critical positions/duties (as defined in § 1214.502 of this part) pursuant to international agreements also require certification under this program. NASA will accept certifications from foreign agencies following review under the NASA Headquarters process (§ 1214.505(e) of this part), if a written agreement has been reached with the foreign sponsoring agency whereby NASA recognizes the foreign agency's process as equivalent to its own. Such agreements will be negotiated by the International Relations Division (Code XI) with the concurrence of the NASA Headquarters Office of Safety and Mission Quality (Code Q) and the Program Office responsible for the program to which such access is sought. The intent of the certification process is that foreign personnel are screened as thoroughly as are U.S. citizens who have access to mission critical space systems areas or who have the need to assume mission critical duties.

(g) NASA will accept certifications from other Federal agenices, departments, and offices following review under the NASA Headquarters process (Section 1214.505(e) of this part), if a written agreement has been reached whereby NASA recognizes that process as equivalent to its own. Such agreements will be negotiated by the NASA Headquarters Office of Safety and Mission Quality (Code Q) and the Program Office responsible for the program to which such access is sought. A security clearance to access classified material is not sufficient to meet the certification requirements of this regulation.

Subpart 1214.6—Mementos Aboard Space Shuttle Flights

AUTHORITY: Pub. L. 85-568, 72 Stat. 426 (42 U.S.C. 2473(c)).

SOURCE: 49 FR 18287, Apr. 30, 1984, unless otherwise noted.

§ 1214.600 Scope.

This subpart establishes policy, procedures, and responsibilities for selecting, approving, packing, storing, and disposing of mementos carried on Space Shuttle flights.

§ 1214.601 Definitions.

(a) *Mementos.* Flags, patches, insignia, medallions, minor graphics, and similar items of little commercial value, especially suited for display by the individuals or groups to whom they have been presented.

(b) *Official flight kit (OFK).* A container reserved for carrying official mementos of NASA and other organizations aboard Space Shuttle flights. No personal items will be carried in the OFK.

(c) *Personal preference kit (PPK).* A container separately assigned to each person accompanying a Space Shuttle flight for carrying personal mementos during the flight.

§ 1214.602 Policy.

(a) *Premise.* Mementos are welcome aboard Space Shuttle flights. However, they are flown as a courtesy—not as an entitlement. The Administrator is free to make exceptions to this accommodation without explanation. Moreover, mementos are ballast not payload. They can be reduced or eliminated by the Manager, National Space Transportation Systems Program, Johnson Space Center, for weight, volume, or other technical reasons without reference to higher authority.

(b) *Constraints.* Mementos to be carried on Space Shuttle flights must be approved by the Administrator and stowed only in an OFK or a PPK. Mementos will not be carried within payload containers, including get-away specials.

(c) *Economic gain.* Items carried in an OFK or a PPK will not be sold, transferred for sale, used or transferred for personal gain, or used or transferred for any commercial or fund-raising purpose. Items will not be approved for flight that have a known or suspected commercial value, such as philatelic covers and coins, or that by their nature lend themselves to exploitation by the recipients, or create problems with respect to good taste.

§ 1214.603 Official flight kit.

(a) *Purpose.* The OFK enables NASA and other organizations (representing launch service customers, researchers, and schools) to utilize mementos as awards and commendations, or to preserve them in musuems or archives. "Other organizations," as used in this paragraph, includes the aerospace industry, the academic community, and the counterpart institutions of friendly foreign countries.

(b) *Limitations.* U.S. national flags will not be flown as mementos except for U.S. Government sponsors.

(c) *Approval of contents.* At least 60 days before the launch of a Space Shuttle flight, a representative of each organization desiring mementos to be carried on the flight must submit an Official Flight Kit and Personal Preference Kit Request, NASA Form 1614, through the cognizant NASA Headquarters Program or Staff Office (e.g., foreign requests through the International Affairs Division, military requests through the DOD Affairs Division, payload requests through the NASA sponsor, and commercial launch service customer requests through the Associate Administrator for Space Flight) to the Associate Director, Johnson Space Center. The Director, Johnson Space Center, will compile the requests and forward them to the Associate Administrator for Space Flight with advice as to whether they can be accommodated within the weight and volume limitations of the specific mission. The Associate Administrator for Space Flight will recommend to the Administrator a final list of items to be included in the OFK.

§ 1214.604 Personal preference kit.

(a) *Purpose.* The PPK enables persons accompanying Space Shuttle flights to carry personal items for use as mementos. Only those individuals actually accompanying such flights may request authorization to carry personal items. These items must be carried in individually assigned PPK's.

(b) *Limitations.* The contents of a PPK must be limited to 20 separate items weighing a combined total of 1.5 pounds (680 grams). No more than one article may be given to any one individual. Increases in these limitations will be authorized only by the Administrator.

(c) *Approval of contents.* At least 60 days before the scheduled launch of a Space Shuttle flight, each person assigned to the flight who desires to carry items in a PPK must submit an Official Flight Kit and Personal Preference Kit Request, NASA Form 1614, to the Associate Director, Johnson Space Center. The Associate Director, Johnson Space Center, will review the requests for compliance with this subpart and submit them with weight data through supervisory channels to the Associate Administrator for Space Flight who will similarly review the requests and forward them with recommendations to the Administrator for final approval. In conducting this review, the Associate Administrator for Space Flight will staff the requests of payload specialists with the Program Associate Administrators responsible for payload management during the mission, and the requests of passengers (everyone who is not a commander, pilot, mission specialist, or payload specialist) with the Associate Administrator for External Relations. Upon receipt of the Administrator's action, the Associate Administrator for Space Flight will provide a copy of each approved request to the requester, the General Counsel, and the Director, Johnson Space Center.

§ 1214.605 Preflight packing and storing.

(a) Items intended for inclusion in OFK's or PPK's must arrive at the Johnson Space Center at least 30 days prior to the flights on which they are scheduled in order for them to be listed on the cargo manifest, packaged, weighed, and stowed aboard the orbiter. Items which do not arrive within the 30-day limit will not be carried on the flight; therefore, they must arrive at the Johnson Space Center even if the Administrator's approval is still pending. Items which do not receive the Administrator's approval will be returned to the persons who submitted them.

(b) The Associate Director, Johnson Space Center, will:

(1) Pack, seal, and weigh the OFK's and PPK's according to the requests approved by the Administrator.

(2) Secure the kits while awaiting the launches on which they are manifested.

§ 1214.606 Postflight disposition.

The Associate Director, Johnson Space Center, will:

(a) Remove and safeguard all the kits following flight;

(b) Return the contents of the PPK's to the persons who submitted them; and

(c) Forward the contents of the OFK to the Administrator through supervisory channels for disposition.

§ 1214.607 Media and public inquiries.

(a) *Official flight kit.* Information on the contents of OFK's will be routinely released to the media and public upon their request, but only after the contents have been approved by the Administrator.

(b) *Personal preference kit.* Information on the contents of PPK's will be routinely released to the media and to the public upon their request immediately following postflight inventory.

(c) *Responsibility for release of information.* The Director of Public Affairs, Johnson Space Center, is responsible for the prompt release of information on OFK and PPK contents.

§ 1214.608 Safety requirements.

The contents of OFK's and PPK's must meet the requirements set forth in NASA Handbook 1700.7, "Safety Policy and Requirements for Payloads Using the Space Transportation System (STS)."

§ 1214.609 Loss or theft.

(a) *Responsibility.* The National Aeronautics and Space Administration will not be responsible for the loss or theft of, or damage to, items carried in OFK's or PPK's.

(b) *Report of loss or theft.* Any person who learns that an item contained in an OFK or a PPK is missing shall immediately report the loss to the Johnson Space Center Security Officer and the NASA Inspector General.

§ 1214.610 Violations.

Any item carried in violation of the requirements of this subpart shall become the property of the U.S. Government, subject to applicable Federal laws and regulations, and the violator may be subject to disciplinary action which could include being permanently prohibited from flying aboard the Space Shuttle or any other manned spacecraft of the National Aeronautics and Space Administration.

Subpart 1214.7—The Authority of the Space Transportation System (STS) Commander

AUTHORITY: Pub. L. 85-588, 72 Stat. 426 (42 U.S.C. 2473, 2455; 18 U.S.C. 799); Art. VIII, TIAS 6347 (18 U.S.T. 2410).

SOURCE: 45 FR 14845, Mar. 7, 1980, unless otherwise noted.

§ 1214.700 Scope.

This subpart establishes the authority of the STS commander to enforce order and discipline during all flight phases of an STS flight to take whatever action in his/her judgment is necessary for the protection, safety, and well-being of all personnel and onboard equipment, including the STS elements and payloads. During the final launch countdown, following crew ingress, the STS commander has the authority to enforce order and discipline among all on-board personnel. During emergency situations prior to liftoff, the STS commander has the authority to take whatever action in his/her judgment is necessary for the protection or security, safety, and well-being of all personnel on board.

§ 1214.701 Definitions.

(a) *STS Elements* consists of the Orbiter, an External Tank, two Solid Rocket Boosters, Spacelab, Upper Stage Boosters (Solid Spinning Upper Stage and Interim Upper Stages) and others as specified in NASA Management Instruction 8040.9.

(b) The *flight crew* consists of the commander, pilot, and mission specialist(s).

(c) A *flight* is the period from launch to landing of a Space Shuttle—a single round trip. (In the case of a forced landing the STS commander's authority continues until a competent authority takes over the responsibility for the Orbiter and for the persons and property aboard.)

(d) The *flight-phases* consist of launch, in orbit, deorbit, entry, landing, and postlanding.

(e) A *payload* is a specific complement of instruments, space equipment, and support hardware/software carried into space to accomplish a scientific mission or discrete activity.

(f) *Personnel on board* refers to those astronauts or other persons actually in the Orbiter or Spacelab during any flight phase of an STS flight (including any persons who may have transferred from another vehicle) and including any persons performing extra-vehicular activity associated with the mission.

§ 1214.702 Authority and responsibility of the STS commander.

(a) During all flight phases of an STS flight, the STS commander shall have the absolute authority to take whatever action is in his/her discretion necessary to (1) enforce order and discipline, (2) provide for the safety and well being of all personnel on board, and (3) provide for the protection of the STS elements and any payload carried or serviced by the STS. The commander shall have authority throughout the flight to use any reasonable and necessary means, including the use of physical force, to achieve this end.

(b) The authority of the commander extends to any and all personnel on board the Orbiter including Federal officers and employees and all other persons whether or not they are U.S. nationals.

(c) The authority of the commander extends to all STS elements and payloads.

(d) The commander may, when he/she deems such action to be necessary for the safety of the STS elements and personnel on board, subject any of the personnel on board to such restraint as the circumstances require until such time as delivery of such individual or individuals to the proper authorities is possible.

§ 1214.703 Chain of command.

(a) The *Commander* is a career NASA astronaut who has been designated to serve as commander on a particular flight, and who shall have the authority and responsibility described in § 1214.702 of this subpart. Under normal flight conditions (other than emergencies or when otherwise designated) the STS commander is responsible to the Flight Director, Johnson Space Center, Houston, TX.

(b) The *pilot* is a career NASA astronaut who has been designated to serve as the pilot on a particular flight and is second in command of the flight. If the commander is unable to carry out the requirements of this subpart, then the pilot shall succeed to the duties and authority of the commander.

(c) Before each flight, the other flight crew members (Mission Specialists) will be designated by the Director of Flight Operations, Johnson Space Center, Houston, TX, in the order in which they will assume the responsibilities and authority of the commander under this subpart in the event that the commander and pilot are both not able to carry out their duties.

(d) The determinations, if any, that a crew member in the chain of command is not able to carry out his or her command duties and is therefore to be relieved of command, and that another crew member in the chain of command is to succeed to the responsibilities and authority of the Commander, will be made by the Director of the Johnson Space Center.

[45 FR 14845, Mar. 7, 1980, as amended at 47 FR 3095, Jan. 22, 1982]

§ 1214.704 Violations.

(a) All personnel on board an STS flight are subject to the authority of the commander and shall conform to his/her orders and direction as authorized by this subpart.

(b) This regulation is a regulation within the meaning of 18 U.S.C. 799, and whoever willfully violates, attempts to violate, or conspires to violate any provision of this subpart or any order or direction issued under this subpart shall be fined not more than $5,000 or imprisoned not more than 1 year, or both.

Subpart 1214.8—Reimbursement for Spacelab Services

SOURCE: 50 FR 30809, July 30, 1985, unless otherwise noted.

§ 1214.800 Scope.

This Subpart 1214.8 establishes the special reimbursement policy for Spacelab services provided to Space Transportation System (STS) customers governed by the provisions of Subpart 1214.1 or Subpart 1214.2. It applies to flights occurring in the second phase of STS operations (U.S. Government fiscal years 1986, 1987, and 1988). The following five types of Spacelab flights are available to accommodate payload requirements:

(a) Dedicated-Shuttle Spacelab flight [Ref. § 1214.804(e)].

(b) Dedicated-pallet flight [Ref. § 1214.804(f)].

(c) Dedicated-FMDM/MPESS (flexible multiplexer-demultiplexer/multipurpose experiment support structure) flight [Ref. § 1214.804(f)].

(d) Complete-pallet flight [Ref. § 1214.804(g)].

(e) Shared-element flight [Ref. § 1214.804(h)].

§ 1214.801 Definitions.

(a) *Shuttle policy.* The appropriate subpart (1214.1 or 1214.2) governing use of the Shuttle. Determinaltion of the appropriate subpart for each customer shall be made by reference to §§ 1214.101 and 1214.201.

(b) *Spacelab elements.* Pallets (3-meter segments), pressurized modules (long or short), and the FMDM/MPESS (1-meter cross-bay structure), all as maintained in the NASA-approved Space lab configuration.

(c) *Standard flight price.* The price for standard Shuttle and standard Spacelab services provided. If a customer elects not to use a portion of the standard services, the standard flight price shall not be affected.

(d) *Shuttle load factor.* The parameter used to compute the customer's pro rata share of Shuttle services and used to compute the Shuttle charge factor. Means of computing this parameter are defined in § 1214.813.

(e) *Spacelab load fraction.* The parameter used to compute the customer's pro rata share of each element's services and used to compute the element charge factor. Means of computing this parameter are defined in § 1214.813.

(f) *Shuttle charge factor and element charge factor.* Parameters used in computation of the customer's flight price. Means of computing these parameters are defined in § 1214.813.

(g) *Dedicated flight price for Spacelab missions.* (1) The single-shift operation dedicated flight price for Spacelab missions is identical to the Shuttle dedicated flight price as defined in the Shuttle policy.

(2) The two-shift operation dedicated flight price for Spacelab missions is the sum of:

(i) The Shuttle dedicated flight price as defined in the Shuttle policy.

(ii) The standard price for additional services required to support a second shift of on-orbit operations.

§ 1214.802 Relationship to Shuttle policy.

Except as specifically noted, the provisions of the Shuttle policy also apply to Spacelab payloads. Although some language in the Shuttle policy is Shuttle-specific, it is the intent of this Subpart 1214.8 that the Shuttle policy be applied to Spacelab also, including the policy on patent and data rights. However, in the event of any inconsistencies in the policies, the Spacelab policy will govern with respect to Spacelab services.

§ 1214.803 Reimbursement policy.

(a) *Reimbursement basis.* (1) This policy is established for the second phase of STS operations (U.S. Government fiscal years 1986, 1987, and 1988).

(2) *Standard flight price.* During this phase, customers covered by Subpart 1214.1 or Subpart 1214.2 shall reimburse NASA for standard Spacelab services an amount which is a pro rata share of:

(i) The appropriate dedicated flight price for the customer's Spacelab mission.

(ii) The standard price for use of the selected Spacelab elements during the second phase of STS operations.

(3) The price shall be held constant for flights during this phase of STS operations.

(4) Reimbursement policies for subsequent phases of STS operations will be developed after NASA has obtained more operational experience.

(b) *Escalation.* Payments shall be escalated in accordance with the Shuttle policy.

(c) Customers shall reimburse NASA an amount which is the sum of the customer's standard flight price and the price for all optional services provided.

(d) *Earnest money.* For those customers required to pay earnest money by the Shuttle policy, the total earnest money payment per payload for Spacelab payloads (including Shuttle services) shall be the lesser of $150,000 or 10% of the customer's estimated standard flight price. Earnest money will be applied to the first payment for standard services made for each payload by the customer or will be retained by NASA if a Launch Services Agreement is not signed.

§ 1214.804 Services, pricing basis, and other considerations.

(a) *Mandatory use of dedicated-Shuttle Spacelab flight.* (1) Customers shall be required to fly under the provisions of paragraph (e) of this section if the customer requires exclusive use of any of the following:

(i) Pressurized module (long or short).

(ii) Three pallets in the "1+1+1" configuration.

(iii) Four pallets in the "2+2" configuration.

(2) In the cases cited in paragraph (a)(1) of this section, if the customer requests, NASA will attempt to find compatible sharees to fly with the customer's payload. If NASA is successful, the customer's Shuttle standard flight price shall be the greater of:

(i) The appropriate dedicated flight price for the customer's Spacelab mission less adjusted reimbursements (as defined in the Shuttle policy) from sharees actually flown.

(ii) The computed shared-flight Spacelab flight price for the customer's payload.

(b) *Apportionment and assignment of services.* Subject to NASA approval, a customer contracting for a Spacelab flight shall be permitted to apportion and assign services under the provisions of the Shuttle policy.

(c) *Postponement and termination.* (1) A customer may postpone the flight of a Spacelab payload one time with no additional charge if postponement occurs more than 18 months before the scheduled launch date.

(2) Postponement or termination fees for Spacelab payloads shall consist of the sum of:

(i) A fee for Shuttle transporation.

(ii) A fee for use of the Spacelab elements.

(3) *Shuttle transportation fee.* Customers shall be governed by the provisions of the Shuttle policy with the following exception. When computing occupancy fees for shared-element payloads, the "adjusted reimbursements from other customers" shall be defined as the adjusted reimbursements from those customers who subsequently contract for the use of the element being shared.

(4) *Spacelab use fee.* The postponement and termination fees for use of the Spacelab elements are computed as a percentage of the customer's price for use of the Spacelab elements and shall be based on the table below. When postponement or termination occurs less than 18 months before launch, the fees shall be computed by linear interpolation using the points provided.

Time when postponement or termination occurs, months before scheduled launch date	Fee for use of Spacelab element(s), percent of price for use of element(s)	
	Postponement	Termination
Dedicated Flights, Dedicated Elements, and Dedicated FMDM/MPESS		
0	75	100
3	60	85
12	14	20
18	5	10
More than 18	5	10
Complete Pallets and Shared Elements		
Less than 8	95	100
8	95	100
9	32	95
12	18	80
18	5	10
More than 18	5	10

(5) At the time of signing of the Launch Services Agreement, NASA shall define a payload removal cutoff date (relative to the launch date) for each Spacelab payload to be flown on a shared flight. A customer may still postpone or terminate a flight after the payload's cutoff date; however, NASA shall not be required to remove the payload before flight.

(d) *Minor delays.* The minor delay provisions of the Shuttle policy shall apply only to those Spacelab payloads whose Shuttle load factor is equal to or greater than 0.05.

(e) *Dedicated-Shuttle Spacelab flight.* (1) A dedicated-Shuttle Spacelab flight is a Shuttle flight sold to a single customer who is entitled to select the Spacelab elements used on the flight.

(2) In addition to the standard services listed in paragraph (i) of this section, the following standard services are provided to customers of dedicated-Shuttle Spacelab flights and form the basis for the standard flight price:

(i) Use of the full standard services of the Shuttle and the Spacelab elements selected.

(ii) One day of one-shift on-orbit operations.

(iii) Standard mission destinations as defined in the Shuttle policy.

(iv) Launch within a prenegotiated 90-day period in accordance with the dedicated flight scheduling provisions of the Shuttle policy.

(v) The available payload operations time of two NASA-furnished mission specialists.

(3) Customers contracting for a dedicated-Shuttle Spacelab flight shall reimburse NASA an amount which is the sum of:

(i) The one-shift operation dedicated flight price for a 1-day Spacelab mission.

(ii) The price for the use of all Spacelab elements used (including all necessary mission-independent Spacelab equipment).

(iii) The price for all optional services provided.

(f) *Dedicated 3-meter pallets and dedicated FMDM/MPESS.* (1) A dedicated pallet (or a dedicated FMDM/MPESS) is one which is sold to a single customer and which includes all Spacelab hardware necessary to permit it to be flown on any shared Shuttle flight as an autonomous payload (e.g., a dedicated 3-meter pallets may either be supplied with its own exclusive igloo or may fly without an igloo if it requires only standard Shuttle services).

(2) In addition to a pro rata share of the standard service listed in paragraph (i) of this section, the following standard services are provided to customers of dedicated pallets (or dedicated FMDM/MPESS) and form the basis for establishing the standard flight price:

(i) A pro rata share of the Shuttle services normally provided, where the basis for proration is the customer's Shuttle load factor as defined in § 1214.813(d)(1) for dedicated pallets and in § 1214.813(e)(2) for dedicated FMDM/MPESS.

(ii) The exclusive services of the pallet (or FMDM/MPESS) and all Spacelab hardware provided to support the pallet (or FMDM/MPESS).

(iii) One day of one-shift on-orbit operations.

(iv) Launch to the standard mission destination of 160 nmi, 28.5° as defined in the Shuttle policy.

(v) Launch within a prenegotiated 90-day period in accordance with the shared-flight scheduling provisions of the Shuttle policy.

(vi) A pro rata share of the on-orbit payload operations time of two NASA-furnished mission specialists, where the basis of proration shall be the customer's Shuttle load factor.

(3) Customers contracting for a dedicated pallet (or FMDM/MPESS) flight shall reimburse NASA an amount which is the sum of:

(i) The product of the customer's Shuttle charge factor and the one-shift-operation dedicated flight price of a 1-day Spacelab mission.

(ii) The price for the use of the pallet (or FMDM/MPESS) selected (including all necessary mission-independent Spacelab equipment).

(iii) The price for all optional services provided.

(g) *Complete pallet.* (1) A complete Spacelab pallet is one which is sold to a single customer but flies with other Spacelab elements on a NASA or NASA-designated Spacelab flight and shares the common standard Spacelab services, e.g., shares an igloo with other pallets.

(2) In addition to a pro rata share of the standard services listed in paragraph (i) of this section, the following standard services are provided to customers of complete pallets and form the basis for the standard flight price.

(i) The pallet's pro rata share of standard Shuttle services, where the basis of proration shall be the customer's Shuttle load factor as defined in § 1214.813(f)(1).

(ii) A pro rata share of 7 days of two-shift on-orbit operations, where the basis of proration shall be the customer's Shuttle load factor.

(iii) Mission destination selected by NASA in consultation with the customer.

(iv) Assignment, with the customer's concurrence, to a Spacelab flight designated by NASA.

(v) Launch date established by NASA.

(vi) A pro rata share of the on-orbit payload operations time of two NASA-furnished mission specialists, where the basis of proration shall be the customer's Shuttle load factor.

(vii) Use of the entire volume above a pallet.

(3) Users contracting for complete pallet flights shall reimburse NASA an amount which is the sum of:

(i) The product of the customer's Shuttle charge factor and the two-shift-operation dedicated flight price of a 7-day Spacelab mission. The dedicated flight price for a 7-day complete-pallet mission is the sum of the dedicated flight price for a 1-day two-shift mission and the charge for 6 extra days of two-shift on-obit operation.

(ii) The price for the use of a complete pallet, including all necessary mission-independent Spacelab equipment.

(iii) The price for all optional services provided.

(h) *Shared element.* (1) A shared element is a Spacelab pallet or module which:

(i) Is shared by two or more customers on a NASA-designated Spacelab flight.

(ii) Shares common standard Spacelab services with other Spacelab elements on the same flight.

(2) In aditionai to a pro rata share of the standard services listed in paragraph (i) of this section, the following standard services are provided to customers of shared elements and form the basis for the standard flight price:

(i) For shared pallets, a pro rata share of the standard services provided by a pallet. The basis of proration shall be the customer's Spacelab load fraction as defined in § 1214.813(g)(1)(i).

(ii) For shared modules, a pro rata share of the standard services provided by a long module flown on a dedicated-Shuttle Spacelab flight. The basis of proration shall be the customer's Spacelab load fraction as defined in § 1214.813(g)(1)(ii). The type of pressurized module actually used to meet a customer's requirement for a shared module shall be determined by NASA subsequent to contract negotiations.

(iii) A pro rata share of the element's share of standard Shuttle services, where the basis for proration shall be the customer's Spacelab load fraction.

(iv) A pro rata share of 7 days of two-shift on-orbit operations, where the basis of proration shall be the customer's Shuttle load factor as defined in § 1214.813(g)(1).

(v) Mission destination selected by NASA in consultation with the customer.

(vi) Assignment, with the customer's concurrence, to a Spacelab flight designated by NASA.

(vii) Launch date established by NASA.

(viii) A pro rata share of the on-orbit operations time of two NASA-furnished mission specialists, where the basis of proration shall be the customer's Shuttle load factor.

(3) Customers contracting for shared-element flight shall reimburse NASA an amount which is the sum of:

(i) The product of the customer's Shuttle charge factor and the two-shift operation dedicated flight price of a 7-day Spacelab mission. The dedicated flight price for a 7-day shared-element mission is the sum of the dedicated flight price for a 1-day two-shift-mission and the charge for 6 extra days of two-shift on-orbit operations.

(ii) The product of the customer's element charge factor and the price for the use of the Spacelab element being used, including all necessary mission-independent Spacelab equipment.

(iii) The price for all optional services provided.

(i) *Common standard Spacelab services.* The following standard Spacelab services are common to all Spacelab flights:

(1) Use of Shuttle[1] and Spacelab hardware.

(2) Spacelab interface analysis.

(3) Kennedy Space Center (KSC) launch.[1]

(4) A five-person NASA flight crew consisting of commander, two pilots, and two mission specialists.

(5) Accommodations for a five-person flight crew.

(6) Prelaunch integration and interface verification of preassembled racks and pallets (Levels III, II, and I for NASA-furnished Spacelab hardware; Level I only for customer-furnished Spacelab hardware).

(7) Shuttle[1] and Spacelab flight planning.

(8) Payload electrical power.

(9) Payload environmental control.

(10) On-board data acquisition and processing services.

(11) Transmission of data to a NASA-designed monitoring and control facility via the basic STS Operational Instrumentation (OI) telemetry system.

(12) Use of NASA-furnished standard payload monitoring and control facilities.

(13) Voice communications between personnel operating the customer's payload and a NASA-designated payload monitoring and control facility.

(14) NASA payload safety review.[1]

(15) NASA support of payload design reviews.[1]

(j) *Typical optional Spacelab services.* The following are typical optional Spacelab services:

(1) Use of special payload support equipment, e.g., instrument pointing system.

(2) Vandenberg Air Force Base (VAFB) launch.

(3) Nonstandard mission destination.

(4) Additional time on orbit.

(5) Mission-independent training, use of, and accommodations for all flight personnel in excess of five.

(6) Mission-dependent training of all NASA-furnished personnel and backups.

(7) Analytical and/or hands-on integration (and de-integration) of the customer's payload into racks and/or onto pallets.

(8) Unique integration or testing requirements.

(9) Additional resources beyond the customer's pro rata share.

(10) Additional experiment time or crew time beyond the customer's pro rata share.

(11) Special access to and/or operation of payloads.

(12) Customer unique requirements for; software development for the Command and Data Management Subsystem (CDMS) onboard computer, configuration of the Payload Operations Control Center (POCC), and/or CDMS utilized during KSC ground processing.

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[1] Typical standard Shuttle services repeated for clarity.

(13) Extravehicular Activity (EVA) services.

(14) Payload flight planning services.

(15) Transmission of Spacelab data contained in the STS OI telemetry link to a location other than a NASA-designated monitoring and control facility.

(16) Transmission of Spacelab data not contained in the STS OI telemetry link.

(17) Level III and/or Level II integration of customer-furnished Spacelab hardware.

(k) *Options.* The provisions of §§ 1214.102(e) and 1214.202(e) do not apply to Spacelab payloads.

§ 1214.805 Unforeseen customer delay.

Should an unforeseen customer payload problem pose a threat of delay to the Shuttle launch schedule or critical off-line activities, NASA shall, if requested by the customer, make all reasonable efforts to prevent a delay, contingent on the availability of facilities, equipment, and personnel. In requesting NASA to make such special efforts, the customer shall agree to reimburse NASA the estimated additional cost incurred.

§ 1214.806 Premature termination of Spacelab flights.

If a dedicated-Shuttle Spacelab flight, a dedicated-pallet flight, or dedicated-FMDM/MPESS flight is prematurely terminated, NASA shall refund the optional services charges for planned, but unused, extra days on orbit. If a complete-pallet or shared-element flight is prematurely terminated, NASA shall refund a pro rata share of the charges for planned, but unused, extra days on orbit to customers whose payload operations are, in NASA's judgment, adversely affected by such premature termination. The basis for proration shall be the customers' Shuttle load factor.

§ 1214.807 Exceptional payloads.

Customers whose payloads qualify under the NASA Exceptional Program Selection Process shall reimburse NASA for Spacelab and Shuttle services on the basis indicated in the Shuttle policy.

§ 1214.808 Standby payloads.

The standby payload provisions of the Shuttle policy do not apply to Spacelab flights.

§ 1214.809 Short-term call-up and accelerated launch.

The short-term call-up and accelerated launch provisions of the Shuttle policy normally are not offered to Spacelab customers. NASA will negotiate any such customer requirements on an individual basis.

§ 1214.810 Integration of payloads.

(a) The customer shall bear the cost of performing the following typical Spacelab-payload mission management functions:

(1) Analytical design of the mission.

(2) Generation of mission requirements and their documentation in the Payload Integration Plan (PIP).

(3) Provision of mission unique training and payload specialists (if appropriate).

(4) Physical integration of experiments into racks and/or onto pallets.

(5) Provision of payload unique software for use during ground processing, on orbit, or in POCC operations.

(6) Supporting operations.

(7) Assuring the mission is safe.

(b) All physical integration (and deintegration) of payloads into racks and/or onto pallets will normally be performed at KSC by NASA. When the customer provides Spacelab elements, these physical integration activities may be done by the customer at a location chosen by the customer.

(c) With the exception of the restrictions noted in paragraph (b) of this section, customers contracting for dedicated-Shuttle and dedicated-pallet flights may perform the Spacelab-payload mission management functions defined in paragraph (a) of this section. NASA will assist customers in the performance of these functions, if requested. Charges for this service will be based on estimated actual costs, or actual costs where appropriate, and will be in addition to the price for standard services.

(d) For complete pallets or shared elements, NASA will normally perform the Spacelab-payload mission management functions listed in paragraph (a) of this section. Charges for this service will be based on estimated actual costs, or actual costs where appropriate, and will be in addition to the price for standard services.

(e) Integration of payload entities mentioned in paragraphs (b)-(d) of this section with NAS-furnished Spacelab support systems and with the Shuttle shall be performed by NASA as a standard service for all payloads flown on customer-furnished Spacelab elements. Customers shall be available to participate as required by NASA in these levels of integration. Customer equipment shall be operated only to the extent necessary for interface verification. Customers requiring additional payload operation after delivery of the payload to NASA shall negotiate such operation as an optional service.

§ 1214.811 Reflight guarantee.

(a) During the second phase of STS operations, there is no additional reflight premium for those shared-flight Spacelab payloads which can be accommodated on a standard Shuttle launch to 160 nmi, 28.5° as defined in the Shuttle policy and all dedicated-flight Spacelab payloads.

(b) NASA and the customer may negotiate appropriate reflight provisions (e.g., scheduling, reflight premiums) for payloads not covered by paragraph (a) of this section. Otherwise, no reflight services shall be provided.

(c) Reflight guarantees, if provided, must cover the customer's entire payload.

(d) Payloads covered by reflight guarantees shall be entitled to a reflight with no charge for standard Spacelab and Shuttle services if both the following occur:

(1) Through no fault of the customer or defect in the customer's payload, Spacelab systems (i.e., data, power, and cooling) are not within nominal specifications, as measured by NASA at normal Spacelab monitoring points, at the time of first turn-on of the customer's payload, all as defined in the Launch Services Agreement.

(2) The customer's mission objective is not achieved solely as a direct result of the occurrence, at the time of first turn-on of the customer's payload, of events described in paragraph (d)(1) of this section.

(e) If more than one reflight is required, no additional reflight premium shall be charged.

(f) If a payload being reflown was not initially covered by a reflight guarantee, the reimbursements for the reflight shall be the same as for a newly-scheduled launch.

§ 1214.812 Payload specialists.

(a) The use of customer-furnished payload specialists shall be subject to the approval of the NASA Administrator or the Administrator's designee.

(b) Customers with payloads whose Shuttle load factor is equal to or greater than 0.5 are entitled to request that a customer-selected payload specialist be flown with the customer's payload. Dedicated-flight customers are entitled to request the flight of two customer-selected payload specialists.

(c) NASA may approve the flight of a customer-selected payload specialist with payloads whose Shuttle load factor is less than 0.5 if, in NASA's judgment, there is sufficient scientific need to warrant such a flight.

(d) The standard Spacelab flight price is based on operation of the customer's payload by two NASA-furnished mission specialists. Accommodations for, and mission-independent training of, any payload specialists and backups required for the customer's mission shall be provided as optional services and shall be paid for by the customer. The price for this service shall be the same for both customer-furnished and NASA-furnished payload specialists.

§ 1214.813 Computation of sharing and pricing parameters.

(a) *General.* (1) Computational procedures as contained in the following subparagraphs of this paragraph of this section shall be applied as indicated. The procedure for computing Shuttle load factor, charge factor, and flight price for Spacelab payloads replaces the procedure contained in the Shuttle policy.

(2) Shuttle charge factors as derived herein apply to the standard mission destination of 160 nmi altitude, 28.5° inclination. Customers shall reimburse NASA an optional services fee for flights to nonstandard destinations.

(3) The customer's total Shuttle charge factor shall be the sum of the Shuttle charge factors for the customer's individual (dedicated, complete, or shared) elements, with the limitation that the customer's Shuttle charge factor shall not exceed 1.0.

(4) Customers contracting for pallet-only payloads are entitled to locate minimal controls as agreed to by NASA in a pressurized area to be designated by NASA. There is no additional charge for this service.

(5) NASA shall, at its discretion, adjust up or down the load factors and load fractions calculated according to the procedures defined in this section. Adjustments shall be made for special space or weight requirements which include, but are not limited to:

(i) Sight clearances, orientation, or placement limits.

(ii) Clearances for movable payloads.

(iii) Unusual access clearance requirements.

(iv) Clearances extending beyond the bounds of the normal element envelope.

(v) Extraordinary shapes.

The adjusted values shall be used as the basis for computing charge factors and prorating services.

(b) *Definitions used in computations*—(1) L_C=Chargeable payload length, m. The total length in the cargo bay occupied by the customer's experiment and the Spacelab element(s) used to carry it.

(2) W_C=The weight of the customer's payload and the customer's pro rata share of the weight of NASA mission-peculiar equipment carried to meet the customer's needs, kg.

(c) *Dedicated-shuttle spacelab flight (1-day mission).* The total reimbursement is as defined in § 1214.804(e)(3).

(d) *Dedicated-pallet flight (1-day mission).* (1) The Shuttle load factors and charge factors for dedicated-pallet flights are shown in Table 1. Subject to other STS Spacelab structural limits, customers are entitled to utilize the payload weight capability of the pallets as indicated in Table 1. Payload weights in excess of those shown are subject to NASA approval and may entail optional services charges.

TABLE 1—SHUTTLE LOAD FACTORS, CHARGE FACTORS, AND NOMINAL CAPACITIES FOR DEDICATED PALLETS

Number of pallets	Load factor		Charge factor		Nominal payload capacity, kg	
	With Igloo	FMDM configuration	With Igloo	FMDM configuration	With Igloo	FMDM configuration
1	0.228	0.189	0.305	0.252	2,325	2,950
2	0.392	NA	0.523	NA	4,470	NA
3-pallet train [1]	0.556	NA	0.742	NA	4,435	NA
2+1 configuration	0.594	NA	0.792	NA	7,750	NA

[1] Three pallets requiring the "1+1+1" configuration shall be flown on a dedicated flight basis [See § 1214.804(a)].

(2) *Total reimbursement.* The customer's total reimbursement is as defined in § 1214.804(f)(3).

(e) *Dedicated FMDM/MPESS flight (1-day mission)*—(1) *Shuttle charge factor.* The computed charge factor for dedicated FMDM/MPESS flights is defined as:

$$\frac{\text{Shuttle Load Factor}}{0.75}$$

(2) *Shuttle load factor.* (i) The Shuttle load factor is defined as the maximum of:

$$\frac{L_C}{18.29} \text{ or } \frac{W_C+767}{29{,}478}$$

(ii) The minimum value of L_C is based on the element length, plus clearances, and is 1.18 m.

(3) *Total reimbursement.* The customer's total reimbursement is as defined in § 1214.804(f)(3).

(f) *Complete pallets (7-day mission).* (1) The Shuttle load factor and charge factor for a complete pallet are 0.198 and 0.228, respectively, and its payload weight capability is 2,583 kg. Subject to other STS or Spacelab structural limits, customers are entitled to utilize this payload weight capability. Payload weight in excess of 2,583 kg is subject to NASA approval and may entail optional service charges.

(2) *Total reimbursement.* The customer's total reimbursement is as defined in § 1214.804(g)(3).

(g) *Shared elements (7-day mission)*—(1) *Spacelab load fractions and Shuttle load factors*—(i) *Pallet.* Spacelab load fraction is the greater of:

$$\frac{W_C}{2{,}583} \text{ or } \frac{\text{Payload volume, m}^3}{15}$$

Shuttle load factor is the greatest of:

$$\frac{W_C}{13{,}045} \text{ or } \frac{\text{Payload volume, m}^3}{76}$$

(ii) *Pressurized module.* Spacelab load fraction and Shuttle load factor are identical and are the greater of:

$$\frac{W_C}{4{,}319} \text{ or } \frac{2\times(\text{Experiment volume})+\text{Storage volume, m}^3}{40}$$

(2) *Shuttle charge factors and element charge factors for pressurized modules.* Shuttle charge factors and element charge factors are identical and are defined as follows:

If the Spacelab load fraction (and Shuttle load factor) is—	The element charge factor and Shuttle charge factor shall be—
Less than 0.00435	.005.
0.00435 to 0.87	Spacelab load fraction divided by 0.87.
Greater than 0.87	1.0.

(3) *Element charge factors for shared pallets.*

If the Spacelab load fraction is—	The element charge factor shall be—
Less than 0.0189	0.0218.
0.0189 to 0.87	Spacelab load fraction divided by 0.87
Greater than 0.87	1.0.

(4) *Shuttle charge factors for shared pallets.*

If the Shuttle load factor is—	The Shuttle charge factor shall be—
Less than 0.00375	0.005.
0.00375 to 0.75	Shuttle load factor divided by 0.75.
Greater than 0.75	1.0.

(5) *Total reimbursement.* (i) The customer's total reimbursement is as defined in § 1214.804(h)(3).

(ii) If a customer contracts for portions of more than one element, the charges for the use of the elements shall apply individually to each element used.

(6) Experiment volume in the pressurized module is defined to be the sum of the customer's payload volume in racks and in the center aisle.

(i) Rack volume is defined relative to basic Air Transportation Rack (ATR) configurations. The customer's rack volume shall be defined as the volume of one or more rectangular parallelepipeds (rectangular-sided box) which totally enclosed the customer's payload. Width dimensions shall be either 45.1 or 94.0 centimeters. Height dimensions shall be integral multiples of 4.45 centimeters. Depth dimensions shall be 61.2 or 40.2 centimeters.

(ii) Center aisle space volume is defined as the volume of a rectangular parallelepiped which totally encloses the customer's payload. No edge of the parallelepiped shall be less than 30 centimeters in length.

(7) Storage volume in the pressurized module is defined as the volume of one or more rectangular parallelepipeds enclosing the customer's stowed payload. No edge of the parallepiped(s) shall be less than 30 centimeters in length.

(8) Volume of the customer's pallet-mounted payload is defined as the volume of a rectangular parallelepiped enclosing the pallet payload and customer-dictated mounting hardware. No edge of the parallelepiped shall be less than 30 centimeters in length.

Subpart 1214.9—Use of Small Self-Contained Payloads

SOURCE: 45 FR 73023, Nov. 4, 1980, unless otherwise noted.

§ 1214.900 Scope.

This subpart sets forth the policy on Space Transportation System (STS) services which are provided by NASA to users of small self-contained payloads (SSCP's).

§ 1214.901 Relation to Subparts 1214.1 and 1214.2.

This subpart governs the provision of STS services for SSCP's and Subparts 1214.1 and 1214.2 are not applicable.

§ 1214.902 Definitions.

(a) U.S. Government users are defined as all agencies of the U.S. Government, including NASA.

(b) SSCP's are small (200 pounds or less and 5 cubic feet or less) scientific research and development payloads flown on a space-available basis in a NASA-supplied standard container under the provisions of this subpart. Such payloads may be composed of one or more experiments in the same container.

(c) Classes of SSCP's are defined as follows:

(1) Class I payloads are payloads flown for scientific educational purposes by a recognized educational institution or in support of a recognized broad-participation scientific educational process (e.g., science fairs). Users with Class I payloads are encouraged to publish results of their work in the open literature.

(2) Class II payloads are payloads that do not come under the Class I definition and are flown by users other than U.S. Government users. A multiclass payload containing a Class II experiment will be considered a Class II payload.

(3) Class III payloads are payloads flown by U.S. Government users that do not come under the Class I definition. A multiclass payload containing Class I and III experiments only will be considered a Class III payload.

(d) A small self-contained payload user is an individual or entity that has either signed a launch services agreement with NASA or is eligible to enter into negotiations to do so on the basis of payment (by the user or others) of earnest money to NASA (or, in the case of a U.S. Government user, has submitted a letter of intent). If more than one individual or entity enters into a joint venture or other arrangement to fly their experiments in one NASA container, one individual or entity shall be designated by them as their agent. This agent shall be the sole "user" for that payload, with full authority to represent every individual or entity which has an interest in that container.

(e) Standard services provided to all SSCP users are listed in § 1214.911.

(f) Optional services are additional services provided to individual users at the request of the user and at the discretion of NASA.

(g) Dual payloads are two SSCP's belonging to the same user for which the user has specified, in the launch services agreements, a requirement that they be flown on the same flight. Each of the payloads shall be completely autonomous and no interconnection of dual payloads shall be permitted.

(h) Undue administrative delay on the part of NASA is defined as a delay caused by NASA's failure to perform its administrative functions in the contracting process in a reasonable time, as determined by NASA. Delays caused by the parties' inability to agree to contract terms and conditions are specifically excluded from this definition.

§ 1214.903 Conditions of use.

(a) Users' payloads must be flown in a NASA-supplied standard container.

(b) SSCP's shall be used only to conduct experiments of a scientific research and development nature.

(c) All users shall be required to furnish NASA with sufficient information to ensure Shuttle safety. NASA shall reserve the right to inspect and/or test any and all materials, components, and elements of the payload at any time.

(d) All users shall be required to furnish NASA with sufficient information to verify peaceful purposes and NASA's and the U.S. Government's continued compliance with law and the Government's obligations.

(e) NASA shall reserve the right to reject any payload which, in the opinion of the NASA Administrator, would be contrary to the spirit of this program or NASA's mission.

(f) To assure humane treatment, all experiments using live animals must have the approval of the Life Sciences Division, Office of Space Science, NASA Headquarters.

§ 1214.904 Reimbursement policy.

(a) *Earnest money.* (1) Earnest money shall be paid to NASA by users (except U.S. Government users) with Class I or Class II payloads prior to launch services contract negotiations. The earnest money, which will be $500 per payload, shall be applied to the user's price or retained by NASA.

(2) U.S. Government users shall submit a letter of intent, signed by an authorized party, to initiate the process of contracting for an SSCP flight.

(b) *Reimbursement by non-NASA users.* (1) All users shall be charged on a fixed-price basis.

(2) The price shall remain fixed for all payloads covered by launch services agreements signed through the third full fiscal year of STS operations. During this period, the price for standard services shall be as designated below.

Maximum Payload for Standard Services

Weight, pounds	Volume, cubic feet	Price
200	5.0	$10,000
100	2.5	5,000
60	2.5	3,000

(3) Subsequent to the first three full fiscal years, NASA may annually adjust the prices for the flight of SSCP's. Such adjustments shall not affect launch services agreements already in force.

(4) NASA shall be reimbursed an amount which is the sum of the price for standard services and the price for optional services.

(5) A separate launch services agreement shall be signed for each payload. At the time a launch services agreement is signed, the user shall reimburse NASA 10% of the price for standard services. This reimbursement shall be in addition to any earnest money already paid.

(6) The user shall reimburse NASA an additional 40% of the price for standard services at the later of:

(i) The time of signing of the launch services agreement, or

(ii) Eighteen months before the earliest acceptable launch date for the payload.

(7) The balance of the reimbursement for standard services, less earnest money payments, shall be made on the date designated for delivery of the payload to the launch site.

(8) Payment for any optional services shall be due on receipt of NASA's billing and shall be made prior to NASA's provision of the service.

(c) *Postponement.* (1) A postponement by the user shall be defined to occur if the user:

(i) With no undue administrative delay on the part of NASA, fails to execute the addendum to the launch services agreement described in § 1214.905(d) either at the time of signing of the launch services agreement or by 18 months before the earliest acceptable launch date, whichever is later; or

(ii) Refuses to accept a tentative flight assignment which, in NASA's judgment, meets the user's stated needs; or

(iii) Fails to deliver the payload to the launch site by the designated time; or

(iv) Declines or is unable to fly the payload on a given flight after having accepted a tentative flight assignment; or

(v) Requests a delay in the earliest acceptable launch date for payload. (Only changes to later dates shall be permitted.)

(2) *Postponement fees for non-NASA users.* (i) Users who postpone the flight of a payload shall reimburse NASA a postponement fee which is the sum of the estimated cost of optional services to be repeated and a fee for standard services.

(ii) A user may postpone the flight of a payload once without incurring a fee for standard services.

(iii) If the second and subsequent SSCP user-initiated postponements occur before the date designated for payload delivery to the launch site, the fee for standard services shall be 5% of the price for standard services. If the second and subsequent user-initiated postponements occur on or after the date designated for payload delivery to the launch site, the fee for standard services shall be 20% of the price for standard services.

(iv) Postponement fees shall be payable on receipt of NASA's billing.

(3) *Rescheduling after a postponement by the user.* Rescheduling of a payload after a user postponement shall be accomplished by establishing a new earliest acceptable launch date. A rescheduled payload shall retain its original position in the flight assignment queue awaiting tentative flight assignment.

(4) A user may not postpone after the container is installed in the Shuttle.

(d) *Cancellation fees for non-NASA users.* (1) Users who cancel the flight of a payload shall reimburse NASA a cancellation fee which is the sum of the estimated cost of optional services performed by NASA prior to the notification of cancellation, including any cancellation costs, and a fee for standard services. In addition, NASA shall retain the earnest money paid for the payload.

(i) If a user cancels after signing a launch services agreement but before the date designated for payload delivery to the launch site, the fee for standard services shall be 10% of the user's standard services price.

(ii) If a user cancels on or after the date designated for payload delivery to the launch site, the fee for standard services shall be 50% of the user's standard services price.

(2) A user may not cancel after the container is installed in the Shuttle.

(3) If flight of a payload which has been previously postponed is cancelled, the cancellation fee shall be the larger of the cancellation fee which would have been applicable at the time of any prior postponement or the cancellation fee calculated at the time of cancellation.

(4) Cancellation fees shall be payable on receipt of NASA's billing.

§ 1214.905 Flight scheduling.

(a) NASA receipt of the user's earnest money or letter of intent for one or more payloads shall be the basis for defining the payload(s) position in a temporary queue designated as the earnest money queue.

(b) Signing of a launch services agreement shall enter the payload covered by the agreement into a flight assignment queue. The payload's position in this queue is determined as follows:

(1) If a launch services agreement is signed within 18 months after NASA receipt of earnest money or letter of intent, the payload shall remain ahead of all payloads that entered the earnest money queue later than it did.

(2) If the launch services agreement is not signed within 18 months after NASA receipt of earnest money or letter of intent, the earnest money date shall be redefined to be 18 months before the date of the launch services agreement signing.

(3) If the user changes a payload's user class designation after signing a launch services agreement, the earnest money payment date shall be rede-

fined to be the date of the user class change.

(4) The 18-month periods defined in §§ 1214.905(b)(1) and 1214.905(b)(2), shall be extended to the extent that the user's failure to sign the launch services agreement is a result of undue administrative delay on the part of NASA.

(c) At the time of signing, the launch services agreement shall designate:

(1) The user class of the payload.

(2) The general nature of the payload.

(3) The size and weight of the payload.

(4) The price for standard services to be provided.

(5) The earliest acceptable launch date as selected unilaterally by the user.

(d) Not less than 18 months before the user's earliest acceptable launch date or at the signing of the launch services agreement, whichever is later, an addendum to the launch services agreement shall be signed by NASA and the user. The addendum shall designate:

(1) Any apportionment or assignment of the payload.

(2) A description of the payload.

(3) Any restrictions on the type of Shuttle flight appropriate for flying the payload, including any firm requirement to fly on a single flight as a dual payload with one other of the user's payloads.

(4) The optional services to be provided by NASA and the price of those services.

(5) The means of compliance with the provisions of § 1214.908 regarding significant impact on public health, safety or welfare.

(e) If, after attempting to negotiate with the user, it is NASA's opinion that the parties will be unable to agree on the terms of the addendum, NASA may terminate further negotiations. This event will be considered a cancellation by the user and the provisions of § 1214.904(d) shall apply.

(f) NASA shall not be obligated to perform any standard or optional services, including flight scheduling, prior to the signing of the addendum to the launch services agreement.

(g) Approximately 1 year before a planned Shuttle launch, NASA shall estimate the number of spaces available for SSCP's, make tentative flight assignments, and establish dates for payload delivery to the launch site.

(h) Payload tentative flight assignment shall be made on a rotation basis by user class. The continuing rotation sequence by class shall be II, I, II, III. If no payloads of a given class are available at the time of tentative flight assignment, a payload of the next class in the rotation shall be assigned to the available space.

(i) When making tentative flight assignments, NASA shall consider only those payloads whose earliest acceptable launch dates are on or before the Shuttle "firm launch data" as defined in § 1214.102(c)(2). (Shuttle flights normally occur on the "firm launch date" or within 60 days thereafter.)

(j) Users' payloads shall be assigned on the basis of their positions in the flight assignment queue within each class with the following exceptions:

(1) If the available flight does not meet the user's requirements defined pursuant to § 1214.905(d)(3), the payload shall not be assigned to the flight but shall retain its position in the flight assignment queue until a sutiable flight becomes available.

(2) A single user may receive tentative flight assignments for no more than two payloads in the same class out of any group of 20 payloads assigned (all classes combined) if there are other payloads available for assignment. However, all the provisions of this subpart shall apply individually to each payload.

(3) Dual payloads shall become eligible for tentative flight asssignment when the latter of the two payloads becomes eligible for tentative flight assignment in the class rotation sequence. If only one space is available on the flight under consideration, a payload of the next available class in the rotation sequence shall be assigned and the dual payloads shall both be assigned to the next compatible flight, provided that the requirements of §§ 1214.905(j)(2) and 1214.905(m) are maintained.

(k) Once an SSCP has been given a tentative flight assignment, it shall not be bumped from a flight as a result of another SSCP user's subsequent signing of a launch services agreement or another SSCP user's postponement.

(l) An SSCP tentatively assigned to a flight may be bumped by NASA as a result of other Shuttle operational considerations. Should this be necessary, bumping shall be done on a last-on, first-bumped basis. If either of a pair of duel payloads is bumped, the remaining payload of the pair shall also be bumped.

(m) Payloads being reflown pursuant to § 1214.907 and payloads bumped by NASA after tentative flight assignment shall have flight assignment priority, in that order, on subsequent flights over all other SSCP's including those already assigned to other flights.

(n) The date for payload delivery to the launch site shall normally be 2 months before the Shuttle "firm launch date." However, NASA may designate a later date.

(o) Users shall not use third-party or joint venture arrangements to attempt to circumvent the intent of this paragraph.

§ 1214.906 Transfer of ownership, apportionment and assignment of services.

(a) Prior to the signing of a launch services agreement, users shall be permitted to transfer, to a third party, ownership of the eligibility to enter into negotiations with NASA for the flight of a small self-contained payload, subject to NASA approval of the transfer.

(b) Transfer of ownership shall not result in a change in position in the earnest money queue.

(c) Subject to NASA approval, SSCP users shall be permitted to apportion and assign services to others.

(d) U.S. Government users shall not transfer to others the eligibility to negotiate a launch services agreement.

(e) NASA shall negotiate with only one responsible person or entity for the use of each NASA container. At the time the launch services agreement is negotiated, the user shall identify a single payload manager for the entire payload to be flown in the container. At the time the addendum to the launch services agreement is signed, the user shall identify any apportionment or assignment of services. After the addendum to the launch services agreement is executed, no additional apportionment, assignment, or transfer of ownership shall be permitted without the written approval of NASA.

§ 1214.907 Reflight guarantee.

NASA guarantees a reflight of the user's payload at no additional charge for SSCP standard services if, through no fault of the user, the mission orbit is not attained and if the payload returns safely to Earth or a second essentially identical payload is provided by the user. Users entitled to a reflight shall be entitled, at no additional charge, to any planned but unused and undamaged optional SSCP services from the flight for which the reflight is provided.

§ 1214.908 Patent and data rights.

NASA will not acquire rights to inventions, patents, or proprietary data privately funded by a user, or arising out of activities for which a user has reimbursed NASA under the policies set forth herein. However, in certain instances in which the NASA Administrator has determined that activities may have a significant impact on the public health, safety, or welfare, NASA may obtain assurances from the user that the results will be made available to the public on terms and conditions reasonable under the circumstances.

§ 1214.909 Damage to payloads.

The user's price does not include a contingency or premium for damage that may be caused to a payload through the fault of the U.S. Government, its contractors, or other STS users. The U.S. Government, therefore, shall assume no risk for damage or loss to the user's payload. The user shall assume that risk or obtain insurance protection against that risk.

§ 1214.910 Special provisions for users who made earnest money deposits or submitted letters of intent prior to publication of this subpart.

(a) Within 30 days after final publication NASA shall supply a copy of this subpart to all users who have made earnest money deposits or submitted letters of intent.

(b) Users may request in writing a refund of their earnest money provided the request is received by NASA within 90 days after final publication of this subpart. There shall be no subsequent refund of earnest money.

(c) Payloads covered by a launch services agreement signed within 18 months after final publication of this subpart shall retain the appropriate queue position established by payment of earnest money or submission of letter of intent.

(d) Payloads not covered by a launch services agreement signed within 18 months after final publication of this subpart shall be governed by the provisions of § 1214.905(b)(2).

§ 1214.911 Small self-contained payload standard services.

The following are standard services provided for small self-contained payloads:

(a) Flight in a NASA flight-qualified standard container.

(b) Use of a NASA shipping container.

(c) One "on" and one "off" signal provided on each of three NASA-provided inputs to the container.

(d) Choice of one standard NASA container atmosphere (vacuum, breathing air, inert gas, inert gas vented in space).

(e) Limited consultation on space systems provided by NASA at designated NASA centers.

(f) NASA payload safety reviews at a designated NASA center. (Safety shall not be compromised. Unusually complex safety reviews or testing/analysis require additional funding.)

(g) Pre-integration storage of the payload at KSC.

(h) Limited access to the payload prior to integration.

(i) Installation of the payload in the container and removal of the payload from the container after flight.

(j) Installation of the container in the Shuttle and removal of the container from the Shuttle after flight.

(k) KSC launch.

(l) On-orbit payload operational time consistent with the primary STS mission.

(m) Brief postflight documentation of the STS mission profile and payload operational times.

(n) Return of payload to the user at the launch site.

§ 1214.912 Small self-contained payload optional services.

(a) The following optional services, under development at the time of publication of this rule, shall be made available using NASA-supplied hardware:

(1) Openable lid.

(2) Optical window in the lid.

(b) NASA shall develop and publish technical and price estimating information relative to the use of the above services.

(c) NASA may, at its discretion, provide other optional services to users. The price for such services shall be negotiated.

Subpart 1214.10—[Reserved]

Subpart 1214.11—NASA Astronaut Candidate Recruitment and Selection Program

SOURCE: 54 FR 37940, Sept. 14, 1989, unless otherwise noted.

§ 1214.1100 Scope.

It is NASA policy to maintain an integrated Astronaut Corps. This subpart 1214.11 sets forth NASA procedures and assigns responsibilities for recruitment and selection of astronaut candidates. It applies to all pilot and mission specialist astronaut candidate selection activities conducted by the National Aeronautics and Space Administration.

§ 1214.1101 Announcement.

(a) Astronaut candidate opportunities Will be announced nationwide by the Johnson Space Center (JSC) and publicized periodically unless specifically canceled by NASA.

(b) Civilian applicants may apply at any time.

(c) JSC is responsible for implementing and refining the astronaut candidate application process to minimize the effort required to file and/or update applications.

(d) Military personnel on active duty must apply through and be nominated by the military service with which they are affiliated. Military nominees will not be part of the continuing pool of applicants. The military services will convene their internal selection boards and provide nominees to NASA. The military nominees will be evaluated by NASA and the military services will be notified promptly of those nominees who are finalists.

(e) The Assistant Administrator for Equal Opportunity Programs, NASA Headquarters, will provide assistance in the recruiting process.

§ 1214.1102 Evaluation of applications.

(a) All incoming applications will be reviewed by the JSC Human Resources Office to determine whether or not applicants meet basic qualifications. Those not meeting the basic qualification requirements will be so notified in writing and will not be eligible for further consideration. Those meeting the basic qualification requirements will have their applications retained for review by a designated rating panel.

(b) The JSC Director, or designee, will appoint the rating panel composed of discipline experts who will review and rate qualified applicants as "Qualified" or "Highly Qualified."

(c) Efforts will be made to assure that minorities and females are included among these discipline experts.

(d) The criteria for each level will be developed by JSC and will serve as the basis for the ratings. The evaluation will be based on the quality of the individual's academic background and experience and the extent to which the individual's academic achievements, experience, and special qualifications relate to the astronaut candidate position. Reference information on those rated "Highly Qualified" will normally be obtained. The JSC Director of Human Resources will monitor this process to assure adherence to applicable rules and regulations.

(e) Those rated "Highly Qualified" may be required to obtain a Class I or Class II physical. Only medically qualified applicants will be referred for final evaluation and possible interview and selection. Those who are not medically qualified will be so informed and will not be eligible for further consideration.

§ 1214.1103 Application cutoff date.

(a) The JSC Director, or designee, is responsible for identifying the need for additional astronaut candidates and for obtaining necessary approval to make selections.

(b) Once such approval has been obtained, the JSC Director will establish a cutoff date for the acceptance of applications. Applications received after the date of the request will be maintained and processed for the next selection. The cutoff date will normally occur every 2 years on or about July 1.

§ 1214.1104 Evaluation and ranking of highly qualified candidates.

(a) The JSC Director will appoint a selection board consisting of discipline experts and such other persons as appropriate to further evaluate and rank the "Highly Qualified" applicants.

(b) Efforts will be made to assure that minorities and females are included on this board.

(c) The "Highly Qualified" applicants who are determined to be the "Best Qualified" will be invited to the Johnson Space Center for an interview, orientation, and detailed medical evaluation.

(d) Background investigations will normally be initiated on those applicants rated "Best Qualified."

§ 1214.1105 Final ranking.

Final rankings will be based on a combination of the selection board's initial evaluations and the results of the interview process. Veteran's preference will be included in this final ranking in accordance with applicable regulations.

§ 1214.1106 Selection of astronaut candidates.

The selection board will recommend to the JSC Director its selection of candidates from among those finalists who are medically qualified. The number and names of candidates selected to be added to the corps will be approved, as required, by JSC/ NASA management and the Associate Administrator for Space Flight, prior to notifying the individuals or the public.

§ 1214.1107 Notification.

Selectees and the appropriate military services will be notified and the public informed. All unsuccessful qualified applicants will be notified of nonselection and given the opportunity to update their applications and indicate their desire to receive consideration for future selections.

Subpart 1214.15—Duty-Free Entry of Space Articles

AUTHORITY: Secs. 116 and 156 of Pub. L. 97-446, 96 Stat. 2335-2336 and 2345-2346 (19 U.S.C. 1202 note).

SOURCE: 49 FR 8427, Mar. 7, 1984, unless otherwise noted.

§ 1214.1500 Scope.

This subpart sets forth NASA's policy and procedures with respect to authorizing the duty-free entry of articles imported into the United States by any person or entity which are to be launched into space by NASA, including spare parts or necessary and uniquely associated support equipment in connection with a launch into space. It also deals with the duty-free entry of articles returned from space by NASA.

§ 1214.1501 Applicability.

This subpart applies to qualifying articles entered or withdrawn from warehouse for consumption in the customs territory of the United States between January 27, 1983, and December 31, 1994, and to articles returned from space by NASA.

§ 1214.1502 Background.

In order to encourage and facilitate the use of NASA's launch services for the exploration and use of space, section 116 of Pub. L. 97-446 provides for the duty-free entry into the United States of certain articles that meet the following two conditions: First, the articles must be imported for NASA for its space related activities or the articles must be imported by another person or entity for the purpose of meeting its obligations under a launch services agreement with NASA. Second, NASA must certify to the Commissioner of Customs that the articles to be entered duty-free are to be imported to be launched into space or are spare parts or necessary and uniquely associated support equipment for use in connection with a launch into space. This exemption from duty is provided for in item 837.00, Tariff Schedules of the U.S. (19 U.S.C. 1202 note). Section 116 of Pub. L. 97-446 also provides for the duty-free entry into the United States of articles returned from space by NASA.

§ 1214.1503 Authority to certify.

(a) The following NASA officials and their deputies are authorized, under the conditions described herein, to make the certification to the Commissioner of Customs required for the duty-free entry of space articles pursuant to item 837.00, Tariff Schedules of the U.S. (19 U.S.C. 1202, note). No further redelegation is authorized.

(1) The NASA Assistant Administrator for Procurement is authorized to issue the certification for articles imported into the United States which are procured by NASA or by other U.S. Government agencies, or by U.S. Government contractors or subcontractors when title to the articles is or will be vested in the U.S. Government pursuant to the terms of the contract or subcontract. Requests for certification should be sent to: H/Assistant Administrator for Procurement, Attn: HP/Director, Procurement Policy Division, National Aeronautics and Space Administration, Washington, DC 20546.

(2) The NASA Associate Administrator for External Relations is authorized to issue the certification for articles imported into the United States

pursuant to international cooperative agreements. Requests for certification should be sent to: L/Associate Administrator for External Relations, Attn: LI/Director, International Affairs Division, National Aeronautics and Space Administration, Washington, DC 20546.

(3) The NASA Associate Administrator for Space Flight is authorized to issue the certification for articles imported into the United States by persons or entities or under agreements other than those identified in paragraphs (a) (1) and (2) of this section. Requests for certification should be sent to: M/Associate Administrator for Space Flight, Attn: MC/Director, Customer Services Division, National Aeronautics and Space Administration, Washington, DC 20546.

(b) Each request for certification shall be reviewed by the Office of the NASA Comptroller and the Office of General Counsel and their concurrence obtained by the certifying official.

(c) To the extent an authorized NASA official approves a request for certification, that official shall sign a certificate in the following form:

Articles for the National Aeronautics and Space Administration, Item 837.00, TSUS

I certify that the articles identified in —— attached, are articles to be imported to be launched into space, spare parts, or necessary and uniquely associated support equipment for use in connection with a launch into space in accordance with item 837.00, Tariff Schedules of the United States.

Name ————————————

Date ————————————

(d) A blanket certificate for one or more launches for a launch customer is authorized but shall require written verification by a NASA official designated by a Director of a receiving NASA Installation that the articles imported meet the conditions of the certificate. The blanket certificate shall be in the following form but may be reasonably revised to accord with the circumstances.

Articles for the National Aeronautics and Space Administration, Item 837.00, TSUS

I certify that the articles for the launch of —— payload(s) pursuant to the NASA Launch and Associated Services Agreement No. ——, dated —— with —— are articles to be launched into space, spare parts, or necessary and uniquely associated support equipment for use in connection with a launch into space, in accordance with item 837.00, Tariff Schedules of the United States. The necessary and uniquely associated support equipment is identified in —— attached.

Before this certificate is used to obtain the duty-free entry of these articles, a cognizant NASA official at the receiving NASA Installation who is designated by the Installation Director shall verify in writing that specifically identified articles to be entered on a particular date are the articles described in this certificate. This verification and this certificate shall be presented to the U.S. Customs Service at the time entry for the particular articles is sought.

Name ————————————

Date ————————————

With respect to articles represented to be necessary and uniquely associated support equipment, the NASA official issuing the blanket certificate shall review these articles and approve their eligibility for duty-free entry. A description of these articles should be referred to in the blanket certificate and should be attached to it.

§ 1214.1504 Procedures.

(a) Request for certification shall be forwarded to the appropriate NASA official who has authority to certify as provided for in § 1214.1503.

(b) Each request for certification shall be accompanied by:

(1) A proposed certificate as provided for in § 1214.1503;

(2) The information and documentation required by 19 CFR 10.102(a);

(3) A statement with respect to each article, or each class of articles if all items in the class are substantially identical whether (i) the article is to be launched into space by NASA (identify the launch agreement, launch vehicle and launch date(s)); or (ii) it is a spare part to an article to be launched into space; or (iii) it is necessary or uniquely associated support equipment for use in connection with a launch into space.

(4) If the article is represented to be necessary and uniquely associated support equipment for use in connection with a launch into space, with respect to each such article or each such class

of articles to be imported, explain why it is necessary and unique; and if the article may be used in connection with an activity other than a launch into space, whether or not it is intended to be so used. If it may be used in such other activity, NASA shall require, of non-U.S. Government agencies, as a condition to obtaining duty-free entry under this subpart, the customer to agree in the relevant NASA launch agreement not to use or in any manner dispose of those articles in the United States other than in connection with a launch into space; and

(5) The anticipated date of entry and port of entry for each article. If the article is to be transported in bond from the port of arrival to another port of entry in the United States, identify both ports.

(c) The signed certificate and its attachment will be forwarded to the NASA installation responsible for the duty-free entry of the materials. The procedures specified in 19 CFR 10.102 will be followed by the NASA installation in obtaining duty-free entry at the Customs port of entry. The NASA installation should ensure that, at the time the articles are to be released after Customs entry, the custody of the imported articles is transferred directly from the carrier or from the U.S. Customs Service to the NASA launch service customer or its agent.

(d) If articles procured under contract by NASA are imported prior to compliance with these procedures and it is essential that the articles be released from Customs custody prior to such compliance, the procedures outlined in 19 CFR 10.101 may be followed by cognizant NASA officials to secure the release of the articles from Customs custody. To the extent applicable, the procedures in § 1214.1504 shall be followed when time permits to obtain duty-free entry for the articles released from Customs custody.

§ 1214.1505 Necessary and uniquely associated support equipment.

The NASA certifying officer should take into account the following criteria in determining whether an article is necessary and uniquely associated support equipment in connection with a launch into space. Applicability of one or more of the following non-exclusive criteria lends support to the conclusion that the article is necessary and uniquely associated support equipment.

(a) The article has been designed and manufactured solely to support the launch of a payload or launch vehicle.

(b) A standard article has been modified in a substantial and extraordinary way considering its physical or functional characteristics solely to support launch of a payload or launch vehicle.

(c) The article's potential use is limited to support the launch of a payload or launch vehicle.

(d) The article is available only from a source outside of the Unites States.

(e) The article is a component of a system purchased outside of the United States.

(f) The article is to be exported from the United States upon completion of its use as support equipment.

§ 1214.1506 Articles returned from space.

Pursuant to section 116 of Pub. L 97-446, the return of articles from space by NASA shall not be considered an importation, and an entry of such materials through the U.S. Customs Service shall not be required. This provision is applicable to articles returned by NASA from space whether or not the articles were launched into space onboard a NASA launch vehicle.

Subpart 1214.16—[Reserved]

Subpart 1214.17—Space Flight Participants

AUTHORITY: 42 U.S.C. 2473 and the National Aeronautics and Space Act of 1958, as amended.

SOURCE: 49 FR 17737, Apr. 25, 1984, unless otherwise noted.

§ 1214.1700 Scope.

This subpart establishes NASA policy and selection procedures for accommodation of space flight participants aboard flights of the STS.

§ 1214.1701 Applicability.

This subpart applies to NASA Headquarters and field installations.

§ 1214.1702 Relation to other Part 1214 material.

Except as specifically noted, all regulatory provisions of Space Shuttle policies also apply to space flight participants. In the event of any inconsistencies in the policies, the regulatory policies established for crew members will govern with respect to space flight participants.

§ 1214.1703 Definitions.

(a) *Space flight participants.* All persons whose presence aboard an STS flight is authorized in accordance with this regulations.

(b) *Committee.* The Space Flight Participant Evaluation Committee, established in NASA Headquarters for the purpose of directing and administering the program for space flight of private citizens. The Committee consists of the following NASA Headquarters officials: Associate Deputy Administrator (Chair), General Counsel, Associate Administrator for External Relations, Associate Administrator for Management, Associate Administrator for Space Flight, Chief Scientist, and Assistant Administrator for Equal Opportunity Programs.

§ 1214.1704 Policy.

(a) NASA policy is to provide opportunity for participation of private citizens in space flight to the extent possible, provided that doing so fulfills purposes defined in the National Aeronautics and Space Act, as amended, and poses no threat to the safety or success of other mission objectives. Persons selected for flight for these purposes are designated as space flight participants.

(b) To be considered for selection as space flight participants, applicants must:

(1) Be free of medical conditions which would either impair the applicant's ability to participate in, or be aggravated by, space flight, as determined by NASA physicians.

(2) Be willing to undergo appropriate background investigation.

(3) Be willing to undergo necessary training.

(4) Meet additional requirements that may be stated in Announcements of Opportunity (AO) soliciting applications for particular spaceflights.

(c) Persons accepted as space flight participant candidates will enter into an agreement with NASA for the period of training, flight, debriefing, and post-flight activities. The agreements will cover such pertinent matters as, but not limited to, responsibilities and authorities of the respective parties, compensation where appropriate, insurance, and liability.

(d) Selection of space flight participants will be based on their comparative abilities to fulfill the objectives and purposes stated in AO's covering one or more STS missions in which their participation is desired. A NASA-designated outside review panel will evaluate the qualifications of applicants to select those who most appropriately meet those purposes of participant flight associated with the particular AO. NASA will retain the authority to make final selection of space flight participants for flight training and eventual flight from among those applicants rated most highly in the review process. NASA will encourage the participation of a wide and diverse array of participants, including women and minorities.

§ 1214.1705 Selection of space flight participants.

(a) The agency will publicly announce each space flight participant opportunity through appropriate means, including notice in the FEDERAL REGISTER and press releases. Each such Announcement of Opportunity will include a listing of basic qualification requirements to be met (including those of § 1214.1704(b)), a statement of the specific National Aeronautics and Space Act purposes to which this opportunity is directed, what information is required of applicants to demonstrate their ability to fulfill those purposes, the criteria on which applicants will be judged, and administrative information such as to whom applications should be directed, the opening and closing dates for applications, and any other information or matters determined to be pertinent to the program in general and/or the specific flight.

(b) All applications received in response to the AO will be screened to eliminate those applicants not meeting the basic qualification requirements.

(c) Remaining applications will be forwarded to the outside review panel established for the announcement in question and composed of members appropriate to the specific purposes stated in that announcement. The review panel will evaluate all the applications and recommend to NASA a list of those applicants who appear most likely to meet the purposes.

(d) NASA selection of applicants qualified to undergo necessary training and be certified for flight will be made by the Committee, based upon criteria that include:

(1) Recommendation of the outside review panel.

(2) Ability to undergo successfully the necessary period of training to ensure adaptation to flight experience and mission activities.

(3) Ability to pass medical and psychological examinations to minimize the possibility of hazard to persons or missions.

(4) Adaptability to living and working in space.

(5) Willingness to enter into an agreement with NASA covering preflight, flight, and post-flight activities, with individual rights and responsibilities set forth in that agreeement.

(6) Satisfactory completion of a background investigation conducted to NASA's standards as adjudicated by the NASA Security Officer.

(e) The Committee will submit a list of those candidates suitable for selection to the NASA Administrator, who will select the requisite number to undergo the necessary training to prepare them for space flight.

(f) Those candidates who successfully complete the training will become qualified as space flight participants. Flight assignments will be made by the Administrator from this qualified group. NASA reserves the right to solicit additional space flight participant applications, if necessary.

(g) Authority to officially designate candidates for training, certify candidates as qualified space flight participants, and assign space flight participants to specific Space Shuttle flights is reserved to the Administrator.

§ 1214.1706 Program management.

The Associate Administrator for Space Flight is responsible for program management under the direction of the Committee chairperson.

§ 1214.1707 Media and public inquiries.

(a) The Associate Administrator for External Relations will respond to all inquiries directed to the agency concerning space flight participants and the process by which they are selected.

(b) The names of all applicants will be withheld from public release until the space flight participants are selected by the Administrator.

PART 1215—TRACKING AND DATA RELAY SATELLITE SYSTEM (TDRSS)

Subpart 1215.1—Use and Reimbursement Policy for Non-U.S. Government Users

Sec.

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AUTHORITY: Sec. 203, Pub. L. 85-568, 72 Stat. 429, as amended; 42 U.S.C. 2473.

SOURCE: 48 FR 9845, Mar. 9, 1983, unless otherwise noted.

Subpart 1215.1—Use and Reimbursement Policy for Non-U.S. Government Users

§ 1215.100 General.

The Tracking and Data Relay Satellite System represents a major investment by the U.S. Government with the primary goal of providing improved tracking and data acquisition services to spacecraft in low earth orbit or to terrestrial users. It is the objective of NASA to operate as efficiently as possible with the TDRSS. This is to the mutual benefit of all users. Such user consideration will permit NASA and non-NASA services to be delivered without compromising the mission objectives of any individual user. To encourage users toward achieving efficient TDRSS usage, a reimbursement policy has been established which is designed to influence users to operate in the most efficient and orderly manner possible. Additionally, the reimbursement policy is designed to comply with the Bureau of the Budget Circular A-25 on User Charges, dated September 23, 1959, which requires that a reasonable charge should be made to each identifiable recipient for a measurable unit or amount of Government service or property from which a special benefit is derived.

§ 1215.101 Scope.

This subpart sets forth the policy governing TDRSS services provided to non-U.S. Government users and the reimbursement for rendering such services. It excludes TDRSS services provided as standard or optional services to Space Transportation System (STS) users under existing policy for Shuttle and Spacelab (14 CFR 1214.1 and 1214.2); that is user command and telemetry support which utilizes and is a part of the Shuttle or Spacelab communications system is a Shuttle/Spacelab service. Cooperative missions are also not under the purview of this subpart. The arrangements for TDRSS services for cooperative missions will be covered in a Memorandum of Understanding (MOU), as a consequence of negotiations between NASA and the other concerned parties. Any MOU which includes provision for any TDRSS service will require signatory concurrence by the Associate Administrator for Space Tracking and Data Systems prior to dedicating Office of Space Tracking and Data Systems resources for support of a cooperative mission.

§ 1215.102 Definitions.

(a) *User.* Any non-U.S. Government representative or entity who contracts with NASA to use TDRSS services.

(b) *TDRSS.* The Tracking and Data Relay Satellite System including Tracking and Data Relay Satellites (TDRS), the White Sands Ground Terminal (WSGT), and the necessary TDRSS operational areas, interface devices and NASA communication circuits to unify the above into a functioning system. It specifically excludes the user ground system/TDRSS interface.

(c) *Bit stream.* The digital electronic signals acquired by TDRSS from the user craft or the user generated input commands for transmission to the user craft.

(d) *Flexible support.* Support requests which permit NASA, at its option, to schedule service at any time during the period of a single orbit of the user mission. Missions requiring multiple support periods during a single orbit may be classified as constrained support.

(e) *Constrained support.* Support requests which specify the exact times NASA is to provide service, or conditions of support which can be translated into exact times for service, such as sub-satellite positions, apogee/perigee position, etc., for which support is needed.

(f) *Scheduling service period.* One scheduled contact utilizing a single TDRS whereby the user by requesting service is allotted a block of time for operations between the user satellite and TDRSS.

§ 1215.103 Services.

(a) *Standard services.* These are services which the TDRSS is capable of providing to low-earth orbital user spacecraft or other terrestrial users.

(1) Tracking services.

(2) Data acquisition service.

(3) Command transmission service.

(4) Emergency line outage recording in the event of a communications failure between White Sands, Goddard Space Flight Center (GSFC), and Johnson Space Center (JSC).

(5) A weekly user spacecraft orbit determination in NASA standard orbital elements as determined by NASA for TDRSS target acquisition purposes.

(6) Delivery of user data at the NASA Ground Terminal (NGT) located at White Sands.

(7) Pre-launch support for data flow test and related activities which require use of a TDRS.

(8) Pre-launch support planning and documentation.

(9) Scheduling user services via TDRSS.

(10) Access to tracking data to enable users to perform orbit determination at their option.

(b) *Mission unique services.* Other tracking and data services desired by the user beyond the standard service and the charges therefor, will be identified and assessed on a case-by-case basis.

§ 1215.104 Apportionment and assignment of services.

No user may apportion, assign, or otherwise convey to any third party its TDRSS service. Each user may obtain service only through contractual agreement with NASA.

§ 1215.105 Delivery of user data.

(a) As a standard service, NASA will provide to the user its data from the TDRSS as determined by NASA in the form of one or more digital or analog bit streams synchronized to associated clock streams at the NGT.

(b) User data handling requirements beyond the NGT interface may be provided as a service without charge to the user, to the extent that NASA determines that it does not exceed NASA's standard communications system. Any additional data transport or handling requirements exceeding NASA's capability will be dealt with as a mission-unique service.

(c) No storage of the user data is provided in the standard service. NASA will provide short-term temporary recording of data at White Sands only in event of a NASA Communications Network (NASCOM) link outage.

(d) NASA will provide TDRSS service on a "best efforts" basis and does not assume the risk of liability for damage to the user or third parties for failure to provide contracted-for services because of damage to the user's payload or other damage to the user or to third parties. The price for TDRSS service does not include a contingency or premium for this potential damage. The user will assume this risk of damage or obtain insurance to protect against that risk.

§ 1215.106 User command and tracking data.

(a) User command data may enter the TDRSS via the NASCOM interface at one of three locations:

(1) For Shuttle payloads which utilize the Shuttle commanding system, command data must enter the system via the Johnson Space Center (JSC and is governed by the policies established for STS services (see § 1215.101).

(2) For free flyers and other payloads, command data must enter the system at the Goddard Space Flight Center (GSFC) if it is to be a standard service.

(3) The use of other command data entry points [e.g., the NASA Ground Terminal (NGT) at White Sands, NM or Johnson Space Center (JSC), for payloads using an independent direct link from TDRS to the user payload] is considered to be a mission unique service.

(b) NASA is required to maintain the user satellite orbital elements to sufficient accuracy to permit the TDRSS system to establish and maintain acquisition. This can be accomplished in two ways:

(1) The user can provide the orbital elements in a NASA format to GSFC to meet TDRSS operational requirements.

(2) The user shall insure that a sufficient quantity of tracking data is received at GSFC to permit the determination of the user satellite orbital elements. The charges for this service

will be determined by using the on-orbit service rates.

§ 1215.107 User data security.

User data security is not provided by the TDRSS. Responsibility for data security resides solely with the user. User desiring data safeguards shall provide and operate, external to the TDRSS, the necessary equipment or systems to accomplish data security. Any such user provisions must be compatible with data flow through TDRSS and not interfere with other users.

§ 1215.108 Defining user service requirements.

Potential users should become familiar with TDRSS capabilities and constraints, which are detailed in the TDRSS User's Guide (GSFC document, STDN No. 101.2), as early as possible. This action allows the user to evaluate the trade-offs available among various TDRSS services, spacecraft design, operations planning, and other significant mission parameters. When these user evaluations have been completed, and the user desires to use TDRSS, the user should initiate a request for TDRSS service.

(a) Initial requests for TDRSS service from non-U.S. Government users should be addressed to NASA Headquarters, Code TX, TDRSS Program, Washington, D.C. 20546. Upon review and preliminary acceptance of the service requirements by NASA Headquarters, the appropriate areas of GSFC will be assigned to the project to produce the detailed requirements, plans and documentation necessary for support of the mission. Changes to user requirements shall be made as far in advance as possible and shall be submitted in writing to both NASA Headquarters, Code TX, TDRSS Program, and GSFC, Code 804, Greenbelt, Maryland 20771.

(b) Acceptance of user requests for TDRSS service is the sole prerogative of NASA. Although TDRSS represents a significant increase to current support capabilities, service capacity is finite, and service will be provided in accordance with operational priorities established by NASA. Request for services within priority groups shall be negotiated with non-NASA users on a first come, first service basis for inclusion into the TDRSS mission model.

§ 1215.109 Scheduling user service.

(a) User service shall be scheduled only by NASA. Scheduling refers to that activity occurring after the user has been accepted and placed in the TDRSS mission model as specified in § 1215.108(b). See Appendix C for a description of a typical user activity timeline.

(b) Schedule conflict will be resolved in general by application of principles of priority to user service requirements. Services shall be provided either as normally scheduled service or as emergency/disruptive update service. Priorities will be different for emergency/disruptive updates than for normal services.

(1) Normally scheduled service is service which is planned and ordered under normal operational conditions and is subject to schedule conflict resolution under normal service priorities. Priorities are established by the NASA Administrator or his/her designee. Requests for normally scheduled service must be received by the schedulers at the GSFC Network Control Center (NCC) no later than 45 minutes prior to requested support time.

(2) Normal scheduling principles of priority are generally ordered as follows beginning with the highest priority:

(i) Launch, reentry, landing of the STS Shuttle or launch of a NASA expendable launch vehicle.

(ii) NASA payloads/spacecraft.

(iii) Other payloads/spacecraft of interest to the United States.

(iv) Other payloads/spacecraft launched by a NASA launch vehicle.

(v) Other payloads/spacecraft.

(vi) Support of other launches.

(3) Exceptions to these priorities may be determined on a case-by-case basis with the NASA Administrator or his/her designee as the priorities stated in paragraph (b)(2) of this section are indicative of general rather than specific cases.

(4) Emergency service conditions are those requiring rapid response to changing user service requirements.

Emergency service may be instituted under the following conditions:

(i) Circumstances which pose a threat to the security of the United States.

(ii) Circumstances which threaten human life.

(iii) Circumstances which threaten user mission loss.

(iv) Other circumstances of such a nature which make it necessary to preempt normally scheduled services.

(5) At times, emergency service requirements will override normal schedule priority. Under emergency service conditions, disruptions to schedule service will occur. As a consequence, users requiring emergency service shall be charged for emergency service at rate factors set forth in Appendix B.

(6) Disruptive updates are scheduled updates which by virtue of priorities, causes previously scheduled user's services to be rescheduled or deleted or are requested by the user less than 45 minutes prior to the scheduled support period.

(i) Disruptive updates will be charged at the same rates as emergency service. User initiated schedule requests which are received less than 45 minutes prior to the requested schedule support time will be considered a disruptive update.

(ii) User initiated schedule requests which are received more than 45 minutes and less than 12 hours prior to the scheduled support period will be acted upon as a routine input provided other users are unaffected. If other users are affected, the scheduling input will be considered a disruptive update and the appropriate charge factor will be applied.

(iii) The Network Control Center (NCC) at GSFC reserves the sole right to schedule, reschedule or cancel TDRSS service. Schedule changes brought about through no fault of the user are not charged the factor for a disruptive update.

(7) While the priority listing remains the general guide for establishing support availability, the NASA schedulers will exercise judgment and endeavor to see that lower priority users are not excluded from a substantial portion of their contracted-for service due to the requirements of higher priority users.

(8) When a user contracts for TDRSS service for an "operational satellite" which interfaces with a significant number of national and worldwide users on a regularly scheduled basis as opposed to a "research and development satellite," NASA will place special emphasis on the operational requirement when planning schedules. This should reduce the probability of losing perishable operational data such as meteorological, climate, or earth resources information.

(c) General user service requirements, which will be used for preliminary planning and mission modeling, should include as a minimum, the following:

(1) Date of service initiation.

(2) Expected date of service termination.

(3) The type of TDRSS services desired [e.g., multiple access, tracking, etc.].

(4) The frequency and duration of each service, including orbital position or time constraints on service delivery from a given spacecraft where appropriate.

(5) Orbital or trajectory parameters and tracking data requirements.

(6) Spacecraft events affecting tracking, telemetry or command requirements.

(7) Signal parameters and data rates by type of service, type and location of antennas and other related information dealing with user tracking, command, and data systems.

(8) Special test requirements, compatibility testing, data flows, simulations, etc.

(9) Identification of type and quantity of user information necessary for control functions, location of user control facility, and identification of communications requirements.

(10) Identification of ground communications requirements and interface points, including the level of support to be requested from NASCOM.

(d) To provide for effective planning, general service requirements should be provided at least 3 years before initiation of service. With these data NASA will determine whether the requested services can be provided.

(e) Detailed requirements for user services must be provided 18 months before the initiation of service. These data will be the basis for the technical definition of the Interface Control Document (ICD). If requirements are received late, necessitating extraordinary NASA activities [e.g., overtime, special printing of documents], such activities will be considered to be mission unique and their cost charged the user.

§ 1215.110 User cancellation of all services.

The user has the right to terminate its service contract with NASA at any time. A user who exercises this right after contracting for service shall pay the charge agreed upon for services previously rendered, and the cost incurred by the Government for support of pre-launch activities, services, and mission documentation not included in that charge. The user will remain responsible for the charges for any services actually provided.

§ 1215.111 User postponement of service.

The user may postpone the initiation of contract service (user launch date) by delivery of written notification to NASA Headquarters, Code TX. If NASA's written approval is not obtained for postponements which delay the initial contract start of service date by more than 6 months, the quantity of service provided may be affected due to changes in other support requirements. Therefore, the validity of previous estimates of predicted support availability may no longer be applicable.

§ 1215.112 User/NASA contractual arrangement.

(a) The NASA Administrator reserves the right to waive any portion of the reimbursement due to NASA under the provisions of the reimbursement policy.

(b) When NASA has determined that a potential user has not made sufficient progress toward concluding a contractual arrangement for service, after being placed in a mission model, NASA shall have the unilateral right to remove that user from the mission model.

(c) NASA shall have the right to determine unilaterally that the potential user has failed to make progress toward concluding a contractual arrangement.

§ 1215.113 User charges.

(a) The user shall reimburse NASA the sum of the charges for standard and mission unique services. Charges will be based on the service rates determined at the beginning of each calendar year and the service time scheduled for the user.

(b) For standard services the user shall be charged only for services rendered, except that if a total cancellation of service occurs, the users shall be charged in accordance with the provisions of § 1215.110.

(1) Standard services which are scheduled, and then cancelled by the user less than 12 hours prior to the start of that scheduled service period, will be charged as if the scheduled service actually occurred.

(2) The time scheduled by the user project shall include the slew time, set up and/or configuration time, TDRSS contact time, and all other conditions for which TDRSS services were allocated to the user.

(3) Charges will be accumulated by the minute, based on the computerized schedule/configuration messages which physically set up the TDRSS equipment at the start of a support period and free the equipment for other users at the end of a support period.

(c) The user shall reimburse NASA for the costs of any mission unique services provided by NASA for the user's benefit unless NASA obtains full cost reimbursement from another user for these mission unique services.

(d) Any person or entity which pays to NASA the initial administrative charge (see § 1215.115) does so with the understanding that it is not refundable whether or not an agreement is entered into with NASA for TDRSS services.

§ 1215.114 Service rates.

(a) Non-U.S. Government user rates will reflect TDRSS total operational and maintenance costs prorated to a per-minute basis.

(b) Rates for TDRSS services will be set by the Associate Administrator for Space Tracking and Data Systems each October for the following year, January through December. Rate variations will reflect changes in operating costs, loading formulas and escalation.

(c) Projected estimates will include escalation bases on the Bureau of Labor Statistics Index for compensation per hour—total private.

(d) Appendix A is provided for preliminary planning purposes only. It delineates the rate per minute by service and type of user. These rates are subject to change.

(e) The per minute charge for TDRSS service is computed by multiplying the charge per minute for the appropriate service by the number of minutes scheduled and the appropriate factor (for flexible, constrained or disruptive/emergency service).

[48 FR 9845, Mar. 9, 1983, as amended at 49 FR 10659, Mar. 22, 1984]

§ 1215.115 Payment and billing.

(a) To each user there will be an initial non-refundable administrative charge of $25,000 which is applicable toward TDRSS operational services.

(b) The procedure for billing and payment of standard TDRSS services is as follows:

(1) The calendar year is divided into two service periods, January through June and July through December. The charge for TDRSS service will be determined in October for the succeeding calendar year.

(2) The estimated cost of service, January through June period, will be due the previous July 1, and will be billed 60 days prior to the payment due date.

(3) The estimated cost of service, July through December period, will be due the previous January 1, and will be billed 60 days prior to the payment due date.

(4) Adjustments to the amounts prepaid will be made to the succeeding billings as the actual service time is tabulated. Amounts due to the user will be credited to the next service period or refunded to the user if no more service is to be provided.

(5) The total estimated cost of all standard pre-launch services such as mission planning, documentation, link analysis, testing, computer, human resources, etc., with the exception of TDRSS operational services, will be paid to the Government prior to NASA rendering such services. This advance payment will be applied as a credit to the charges billed for post-launch TDRSS operational services as specified in paragraphs (b) (1) through (4) of this section.

(c) Payment schedules for mission unique services will be mutually developed between NASA the user on a case-by-case basis, dependent upon level of engineering effort, long-lead items, special communication services or other considerations. Payment will generally be made prior to NASA incurring a cost for mission unique service.

(d) Late payments by the user will require the user to pay a late payment charge equal to 1½% per month of the unpaid balance calculated daily from the date the payment was due until the date payment is made.

APPENDIX A TO PART 1215—ESTIMATED SERVICE RATES IN 1991 DOLLARS FOR TDRSS STANDARD SERVICES (BASED ON NASA ESCALATION ESTIMATE)

TDRSS user service rates for services rendered in CY-91 based on current projections in 1991 dollars are as follows:

Single Access Service—Forward command return telemetry, or tracking, or any combination of these, the base rate is $178.00 per minute for non-U.S. Government users.

Multiple Access Forward Service—Base rate is $39.00 per minute for non-U.S. Government users.

Multiple Access Return Service—Base rate is $12.00 per minute for non-U.S. Government users.

[55 FR 20593, May 18, 1990]

APPENDIX B TO PART 1215—FACTORS AFFECTING STANDARD CHARGES

Charges for services shall be determined by multiplying the factors below by the base rates for standard services set forth in Appendix A.

	Flexible	Time or position constrained	Emergency service, disruptive updates
Single access service	.5	1	2
Multiple access forward (command) service	.67	1	2

	Normally scheduled support	Emergency service disruptive updates
Multiple access return (telemetry) service	1	2

APPENDIX C TO PART 1215—TYPICAL USER ACTIVITY TIMELINE

Time (approximate)	Activity
Project conceptualization (At least 3 years before launch. Ref. § 1215.108(a)).	Request NASA Headquarters perform study to determine availability of TDRSS. $25,000 non-refundable charge for this service. Placement into mission model if accepted.
3 year before launch (Ref. § 1215.109(c)).	Submit general user requirements to permit preliminary planning. Begin payment for pre-mission activities. (Ref. § 1215.115(b)(5).)
18 months before launch (earlier if interfacing is expected).	Provide detailed requirements for technical definition and development of operational documents and ICD's. (Ref. § 1215.109(e).)
3 weeks prior to a scheduled support period (SSP)	Submit scheduling request to GSFC covering a weekly period.
2 weeks prior to an SSP.	Receive schedule from GSFC based on principles of priority (§ 1215.109(b)(2)). Acknowledgement to GSFC required.
Up to 12 hours prior to an SSP.	Can cancel an SSP without charge. (Ref. § 1215.113(a)(1).)
Up to 45 minutes prior to an SSP.	Can schedule an SSP if a time slot is available without impacting another user.
Between SSP minus 45 minutes and the SSP.	Schedule requests will be charged at the disruptive update rate (Ref. § 1215.109(b)(5)).
Real Time	Emergency service requests will be responded to per the priority system (Ref. § 1215.109(b)(3)) and assessed the emergency service rate.

PART 1216—ENVIRONMENTAL QUALITY

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Subpart 1216.1—Policy on Environmental Quality and Control

AUTHORITY: The National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2451 *et seq.*); the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*); the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*); sec. 309 the Clean Air Act, as amended (42 U.S.C. 7609); E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977); the Council on Environmental Quality NEPA Regulations (40 CFR Part 1500-1508); and E.O. 12114, Jan. 4, 1979 (44 FR 1957).

SOURCE: 44 FR 44485, July 30, 1979, unless otherwise noted.

§ 1216.100 Scope.

This subpart sets forth NASA policy on environmental quality and control and the responsibilities of NASA officials in carrying out these policies.

§ 1216.101 Applicability.

This subpart is applicable to NASA Headquarters and field installations.

§ 1216.102 Policy.

NASA policy is to:

(a) Use all practicable means, consistent with NASA's statutory authority, available resources, and the national policy, to protect and enhance the quality of the environment;

(b) Provide for proper attention to and ensure that environmental amenities and values are given appropriate consideration in all NASA actions, including those performed under contract, grant, lease, or permit;

(c) Recognize the worldwide and long-range character of environmental concerns and, when consistent with the foreign policy of the United States and its own responsibilities, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of the world environment;

(d) Use systematic and timely approaches which will ensure the integrated use of the natural and social sciences and environmental design arts in planning and decisionmaking for actions which may have an impact on the human environment;

(e) Pursue research and development, within the scope of NASA's authority or in response to authorized agencies, for application of technologies useful in the protection and enhancement of environmental quality;

(f) Initiate and utilize ecological and other environmental information in the planning and development of resource-oriented projects; and

(g) Invite cooperation, where appropriate, from Federal, State, local, and regional authorities and the public in NASA planning and decisionmaking processes.

§ 1216.103 Responsibilities of NASA officials.

(a) The Associate Administrator for Management or designee shall:

(1) Coordinate the formulation and revision of NASA policies and positions on matters pertaining to environmental protection and enhancement;

(2) Represent NASA in working with other governmental agencies and interagency organizations to formulate, revise, and achieve uniform understanding and application of governmentwide policies relating to the environment;

(3) Develop and ensure the implementation of agencywide standards, procedures, and working relationships for protection and enhancement of environmental quality and compliance with applicable laws and regulations;

(4) Develop, as an integral part of NASA's basic decision processes, procedures to ensure that environmental factors are properly considered in all proposals and decisions;

(5) Establish and maintain working relationships with the Council on Environmental Quality, Environmental Protection Agency, and other national, state, and local governmental agencies concerned with environmental matters;

(6) Acquire information for and ensure the preparation of appropriate NASA reports on environmental matters.

(b) Officials-in-Charge of Headquarters Offices and NASA Field Installation Directors are responsible for:

(1) Identifying matters under their cognizance which may affect protec-

tion and enhancement of environmental quality and for employing the proper procedures to ensure that necessary actions are taken to meet the requirements of applicable laws and regulations;

(2) Coordinating environmental quality-related activities under their cognizance with the Associate Administrator for Management; and

(3) Supporting and assisting the Associate Administrator for Management on request.

(c) Officials-in-Charge of Headquarters Offices are additionally responsible for:

(1) Giving high priority, in the pursuit of program objectives, to the identification, analysis, and proposal of research and development which, if conducted by NASA or other agencies, may contribute to the achievement of beneficial environmental objectives; and

(2) In coordination with the Associate Administrator for Management, making available to other parties, both governmental and nongovernmental, advice and information useful in protecting and enhancing the quality of the environment.

(d) NASA Field Installation Directors are additionally responsible for:

(1) Implementing the NASA policies, standards and procedures for the protection and enhancement of environmental quality and supplementing them as appropriate in local circumstances;

(2) Specifically assigning responsibilities for environmental activities under the installation's cognizance to appropriate subordinates, while providing for the coordination of all such activities; and

(3) Establishing and maintaining working relationships with national, state, regional and governmental agencies responsible for environmental regulations in localities in which the field installations conduct their activities.

[44 FR 44485, July 30, 1979, as amended at 53 FR 9760, Mar. 25, 1988]

Subpart 1216.2—Floodplain and Wetlands Management

AUTHORITY: E.O. 11988 and E.O. 11990, as amended; 42 U.S.C. 2473(c)(1).

SOURCE: 44 FR 1089, Jan. 4, 1979, unless otherwise noted.

§ 1216.200 Scope.

This Subpart 1216.2 prescribes procedures to:

(a) Avoid long- and short term adverse impacts associated with the occupancy and modification of floodplains and wetlands;

(b) Avoid direct or indirect support of floodplain and wetlands development wherever there is a practicable alternative;

(c) Reduce the risk of flood loss;

(d) Minimize the impact of floods on human health, safety and welfare;

(e) Restore, preserve and protect the natural and beneficial values served by floodplains and wetlands;

(f) Develop an integrated process to involve the public in the floodplain and wetlands management decision-making process;

(g) Incorporate the Unified National Program for Flood Plain Management; and,

(h) Establish internal management controls to monitor NASA actions to assure compliance with the Orders.

§ 1216.201 Applicability.

These procedures are applicable to Federal lands and facilities under the management control of NASA Headquarters and field installations regardless of location.

§ 1216.202 Responsibility of NASA officials.

(a) Directors of Field Installations and, as appropriate, the Associate Administrator for Management at NASA Headquarters, are responsible for implementing the requirements and procedures prescribed in § 1216.204 and § 1216.205.

(b) The Assistant Associate Administrator for Facilities Management, NASA Headquarters, is responsible for overall coordination of floodplain and wetlands management activities, and for conducting periodic on-site reviews of each installation's floodplain and wetlands management activities to assure compliance with the Executive orders.

[53 FR 9760, Mar. 25, 1988]

§ 1216.203 Definition of key terms.

(a) *Action*—any NASA activity including, but not limited to, acquisition, construction, modification, changes in land use, issuance of facilities use permits, and disposition of Federal lands and facilities.

(b) *Base flood*—is that flood which has a one percent chance of occurrence in any given year (also known as a 100-year flood). This term is used in the National Flood Insurance Program (NFIP) to indicate the minimum level of flooding to be used by a community in its floodplain management regulations.

(c) *Base floodplain*—the 100-year floodplain (one percent chance floodplain). Also see definition of floodplain.

(d) *Critical action*—any activity for which even a slight chance of flooding would be too great, such as storing lunar samples or highly toxic or water reactive materials.

(e) *Facility*—any item made or placed by a person including buildings, structures and utility items, marine structures, bridges and other land development items, such as levees and drainage canals.

(f) *Flood or flooding*—a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland and/or tidal waters, and/or the unusual and rapid accumulation or runoff of surface waters from any source.

(g) *Flood fringe*—that portion of the floodplain outside of the regulatory floodway (often referred to as "floodway fringe").

(h) *Floodplain*—the lowland and relatively flat areas adjoining inland and coastal waters including flood-prone areas of offshore islands, including at a minimum, that area subject to a one percent or greater chance of flooding in any given year. The base floodplain shall be used to designate the 100-year floodplain (one percent chance floodplain). The critical action floodplain is defined as the 500-year floodplain (0.2 percent chance floodplain). A large portion of NASA coastal floodplains also encompasses wetlands.

(i) *Floodproofing*—the modification of individual structures and facilities, their sites, and their contents to protect against structural failure, to keep water out or to reduce the effects of water entry.

(j) *Minimize*—to reduce to the smallest possible amount or degree.

(k) *One percent chance flood*—the flood having one chance in 100 of being exceeded in any one-year period (a large flood). The likelihood of exceeding this magnitude increases in a time period longer than one year, e.g., there are two chances in three of a larger flood exceeding the one percent chance flood in a 100-year period.

(l) *Practicable*—capable of being done within existing constraints. The test of what is practicable depends upon the situation and includes consideration of the pertinent factors such as environment, cost or technology.

(m) *Preserve*—to prevent modification to the natural floodplain environment or to maintain it as closely as possible to its natural state.

(n) *Regulatory floodway*—the area regulated by Federal, State or local requirements; the channel of a river or other watercourse and the adjacent land areas that must be reserved in an open manner; i.e., unconfined or unobstructed either horizontally or vertically to provide for the discharge of the base flood so the cumulative increase in water surface elevation is no more than a designated amount (not to exceed one foot as set by the National Flood Insurance Program (NFIP)).

(o) *Restore*—to re-establish a setting or environment in which the natural functions of the floodplain can again operate.

(p) *Wetlands*—those areas that are frequently inundated by surface or ground water and normally support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, river overflows, mud flats, wet meadows, and natural ponds. Because all NASA wetlands lie in floodplains and for purposes of simplifying the procedures of this subpart, floodplains will be understood as to encompass wetlands, except in cases where wetlands factors require special consideration. (Also, see definition of floodplain.)

(q) *Support*—actions which encourage or otherwise provide incentives to undertake floodplain or wetlands development, such as extending roads or utilities into or near a floodplain, therefore making floodplain development more feasible.

§ 1216.204 General implementation requirements.

(a) Each NASA field installation shall prepare, if not already available, an installation base floodplain map based on the latest information and advice of the appropriate District Engineer, Corps of Engineers, or, as appropriate, the Director of the Federal Emergency Management Agency. The map shall delineate the limits of both the 100-year and 500-year floodplains. A copy of the map, approved by the Field Installation Director, will be provided to the Assistant Associate Administrator for Facilities Management, NASA Headquarters, by February 28, 1979. The map will conform to the definitions and requirements specified in the Floodplain Management Guidelines for Implementing Executive Order 11988.

(b) For any proposed action or critical action, as defined in § 1216.203(a), using the approved floodplain map, the Field Installation Director, while concurrently seeking to avoid the floodplain, shall determine if the proposed action *will* or *will not* be located in, or may indirectly impact or indirectly support development in, the base (substitute "500-year" for "base" in critical action cases) floodplain and proceed accordingly:

(1) If the action or critical action *will* be located in the base floodplain or may indirectly impact or indirectly support floodplain development, and is not excepted under § 1216.204(h), field installations will adhere to the procedures prescribed in § 1216.205.

(2) If such action or critical action *will not* be located in the base floodplain, or is the type of action that will clearly nor indirectly impact or indirectly support floodplain development, the action may be implemented without further review or coordination, provided all other applicable NASA requirements and policies have been met.

(c) Any request for new authorizations or appropriations transmitted to the Office of Management and Budget shall indicate, on a case-by-case basis, if the action proposed will be located in a floodplain and whether the proposed action is in accordance with Executive Orders 11988 and 11990.

(d) Each field installation shall: Take floodplain management and wetlands protection into account when formulating its water and land use plans—and when evaluating like plans of others—as an integral part of its facilities master planning activities; Restrict the use of land and water resources appropriate to the degree of flood hazard involved; and, Incorporate recommended Federal and State actions for the continuing unified program for planning and action at all levels of government to reduce the risk of flood losses in accordance with the Unified National Program for Flood Plain Management (U.S. Water Resources Council, 1978).

(1) Descriptive documentation supporting these planning matters shall be included in the "land use" section of each field installation's facilities master plan, as prescribed in NASA Management Instruction 7232.1, Master Planning of NASA Facilities. The evaluation and quantification of flood hazards should be expressed in terms of:

(i) Potential for monetary loss;

(ii) Human safety, health, and welfare;

(iii) Shifting of costs, damage or other adverse impacts to off-site properties; and

(iv) Potential for affecting the natural and beneficial floodplain values.

(2) NASA shall provide appropriate guidance to applicants for facilities use permits and grants to enable them to similarly evaluate, in accordance with the Orders, the effects of their proposals in floodplains and wetlands. This evaluation will be a precondition of any NASA approval of such permit or grant involving floodplains or wetlands.

(e) Facilities to be located in floodplains will be constructed in accordance with the standards and criteria promulgated under the National Flood Insurance Program (NFIP). Deviations are allowed only to the extent that these standards are inappropriate for NASA operations, research and test activities. Because construction of NASA facilities will rarely be necessary in floodplains and wetlands, expertise in the latest flood proofing measures, standards and criteria will not be normally maintained within the NASA staff. To assure full compliance with the NFIP regulations, and that the Order's key requirement to minimize harm to or within the floodplain or wetlands is met, field installations will:

(1) Consult with the appropriate local office of the Corps of Engineers or FIA and/or U.S. Fish and Wildlife Service, as applicable, on a regular basis throughout the facility design or action planning phase. Documentation of this consultation will be recorded in the field installation's project file.

(2) Submit evidence of the successful completion of this consultation to the Assistant Associate Administrator for Facilities Management, NASA Headquarters, prior to the start of project construction.

(f) If NASA property used or visited by the general public is located in an identified flood hazard area, the installation shall provide on structures, in this area and other places where appropriate (such as where roads enter the flood hazard area), conspicuous delineation of the 100-year and 500-year flood levels, flood of record, and probable flood height in order to enhance public awareness of flood hazards. In addition, field installations shall review their storm control and disaster plans to assure that adequate provision is made to warn and evacuate the general public as well as employees. These plans will include the integration of adequate warning time into such plans. The results of this review shall be submitted to the Assistant Associate Administrator for Facilities Management, NASA Headquarters, by February 28, 1979.

(g) When property in floodplains is proposed for lease, permit, out-grant, easement, right-of-way, or disposal to non-Federal public or private parties, the field installation shall:

(1) Reference in the conveyance document (prepared by the General Services Administration in disposal actions) those uses that are restricted under identified Federal, State, and local floodplain regulations, such as State coastal management plans.

(2) Except where prohibited by law, attach other appropriate restrictions, equal to the Order's in scope and strictness, to the uses of properties by the grantee or purchaser and any successors which assure that:

(i) Harm to lives, property and floodplain values are identified; and

(ii) Such harm is minimized and floodplain values are restored and preserved.

(3) Withhold such properties from conveyance if the requirements of paragraphs (g)(1) and (2) of this section cannot be met.

(h) The NASA Administrator has determined that certain types of actions taken in coastal floodplains and wetlands typically do not possess the potential to result in long- or short-term adverse impacts associated with the occupancy or modification of floodplains, or result in direct or indirect support of floodplain development. Nevertheless, in undertaking these actions, any opportunities to minimize, restore, and preserve floodplain and wetlands values must be considered and implemented. With this understanding, for the following types of actions, Directors of Field Installations in coastal locations may determine that undertaking such actions does not warrant full application of the procedures prescribed in § 1216.205.

(1) Hazard mitigation actions taken by a field installation on an emergency basis to reduce and control hazards associated with established NASA test or operations activities in accordance with the field installation's approved Safety Plan. Any such action must be approved in writing by the Field Installation's Safety Officer, and the approval document retained in the Safety Office files.

(2) Repair, maintenance or modification to existing roadways, bridges and utility systems in coastal floodplains or wetlands which provide long-term

support for major NASA operations and test facilities (usually located out of the base floodplain), provided such repair, maintenance or modification activities are of a routine or emergency nature for which the "no action" alternative is not practicable; and it is ostensibly evident that:

(i) The proposed action would not impact the floodplain or wetlands.

(ii) The only alternative would be to construct new duplicate facilities near the same site with attendant impacts on the floodplain or wetlands area.

(3) Rehabilitation and modification of existing minor technical facilities (such as camera pads, weather towers, repeater buildings), including the repair of such damaged facilities to a condition closely matching the original construction, provided it can be readily determined by Directors of Field Installations that there is no practicable alternative but to continue the activity in its current coastal floodplain site. In such cases, the sitings of such facilities must be rigidly constrained by nationally recognized master planning criteria, such as "line-of-sight, quantity-distance, and acoustic sound-pressure-level" factors. In addition, certification of these determinations by Directors of Field Installations will be retained in the project file.

[44 FR 1089, Jan. 4, 1979, as amended at 53 FR 9760, Mar. 25, 1988]

§ 1216.205 Procedures for evaluating NASA actions impacting floodplains and wetlands.

(a) Before taking any action a determination shall first be made whether the proposed action will occur in or may adversely affect a floodplain or wetlands, using the method prescribed in § 1216.204(b).

(b) These procedures apply only to evaluations of those proposed actions which are to be located in or may adversely impact floodplains. These evaluations shall be made at the earliest practicable stage of advance planning, such as during facilities master plan development or when preparing preliminary engineering reports. These evaluations shall include analyses of harm to lives and property, the natural and beneficial values of floodplains and wetlands, and the cumulative impacts of multiple actions over the long term.

(1) Early public notice is the next step in the evaluation process and will normally be accomplished using only the appropriate State and areawide clearinghouses as identified in Office of Management and Budget (OMB) Circular A-95, and by coordinating with these clearinghouses as prescribed in NASA Management Instruction 8800.9, Coordination of NASA Facilities Planning and Projects. If, however, actions involving land acquisition or a major change in land or water use is proposed, the overall public audience will be as broad as reasonably possible including, but not limited to, adjacent property owners and residents, near-by floodplain residents and local elected officials. To assure their continuous interaction and involvement, the field installation will issue public notices and newsletters, and hold public hearing and/or work shops on a formalized scheduled basis to provide the opportunity for public input and understanding of the proposed action. Regardless of the scope of action proposed, initially a notice will be provided to the appropriate OMB Circular A-95 clearinghouses that will not exceed three pages and will include:

(i) A location map of the proposed action.

(ii) The reasons why the action is proposed to be located in a floodplain.

(iii) A statement indicating whether the action conforms to applicable state and local floodplain protection standards.

(iv) A list of any NASA identified alternatives to be considered.

(v) A statement explaining the timing of public notice review actions to provide opportunities for the public to provide meaningful input.

(2) Working with the appropriate OMB Circular A-95 clearinghouses and, if applicable, other public groups and officials, to identify practicable alternatives in addition to those already identified by NASA. The alternatives will include:

(i) Carrying out the proposed action at a location outside the base floodplain (alternative sites).

(ii) Other means which accomplish the same purpose as the proposed action (alternative actions).

(iii) Taking no action, if the resulting hazards and/or harm to or within the floodplain overbalances the benefits to be provided by the proposed action.

(3) The costs and impacts of all practicable alternatives must now be fully determined to properly assess the practicability of avoiding the base floodplain, or of minimizing harm to the floodplain if alternatives directly or indirectly support floodplain development or have other adverse impacts.

(i) The basic criteria to be used in determining the impacts of the various alternatives appear in the Floodplain Management Guidelines for Implementing Executive Order 11988 (43 FR 6030). These criteria discuss in detail the three basic types of impacts which are to be addressed:

(A) Positive and negative impacts (beneficial and harmful);

(B) Concentrated and dispersed impacts (impacts on-site, near-site, and remote from the installation); and

(C) Short and long-term impacts (include temporary changes and those that take the form of delayed changes resulting from the cumulative effects of many individual actions).

(ii) Also to be determined is the nature of resulting hazards and risk to lives and property; and the restoration and preservation of natural and beneficial floodplain and wetlands values.

(iii) In determining the type, magnitude, costs, timing factors, etc., of the impacts, it is emphasized that subjective assessments have little value. To qualify for inclusion in the evaluation process, an impact must be fully described and quantified in a measurable way compatible with good scientific or engineering practice. Briefly stated, an impact is effected by or based on, and limited to, a quantified alteration of existing coastal or riverine systems including:

(A) Anticipated flood levels, sheet flow, coursing and velocity of flood caused surface water;

(B) Ground water flows and recharge;

(C) Tidal flows;

(D) Topography; and,

(E) Ecology, including water quality, vegetation and the terrestrial and aquatic habitats.

(4) For the proposed action and those alternatives which will impact the floodplain or wetlands, additional analysis must be undertaken to minimize, restore and preserve the natural and beneficial floodplain or wetlands values. Because NASA does not retain expertise in these areas of floodplain management, field installations will consult, on a case-by-case basis, with the appropriate local office of the U.S. Fish and Wildlife Service to assure that, for each of the above alternatives, methods are prescribed which will:

(i) Minimize harm to lives and property from flood hazards;

(ii) Minimize harm to natural and beneficial values of floodplains and wetlands; and

(iii) Restore floodplains or wetlands values, if applicable, to the proposed action.

(5) The proposed action and alternatives shall now be comparatively evaluated taking into account the identified impacts, the steps necessary to minimize these impacts and opportunities to restore and preserve floodplain and wetlands values. The comparison will emphasize floodplain values.

(i) If this evaluation indicates that the proposed action in the base floodplain is still practicable, consider limiting the action so that a non-floodplain site could be more practicable.

(ii) If the proposed action is outside the floodplain but has adverse impacts or supports floodplain development, consider modifying or relocating the action to eliminate or reduce these effects or even taking no action.

(6) If, upon completing the comparative evaluation, the Field Installation Director determines that the only practicable alternative is locating in the base floodplain, a statement of findings and public explanation must be provided to all those who have received the early public notice, and specifically to the appropriate OMB Circular A-95 clearinghouses, and will include as a minimum:

(i) The reasons why the proposed action must be located in the floodplain.

(ii) A statement of all significant facts considered in making the determination including alternative sites and actions.

(iii) A statement indicating whether the actions conform to applicable State and local floodplain protection standards.

(iv) In cases where land acquisition or major changes in land use are involved, it may also be appropriate to include:

(A) A provision for publication in the FEDERAL REGISTER or other appropriate vehicle.

(B) A description of how the activity will be designed or modified to minimize harm to or within the floodplain.

(C) A statement indicating how the action affects natural or beneficial floodplain or wetlands values.

(D) A statement listing other involved agencies and individuals.

(7) After a reasonable period (15 to 30 days) to allow for public response, the proposed action may proceed through the normal NASA approval process, or if disposal is anticipated, the action can be implemented in accordance with Federal Property Management Regulations real property disposal procedures. If, however, significant new information is revealed in comments by the public, the field installation shall re-evaluate the proposed action in accordance with the provisions of paragraph (L)(5) of this section.

(8) For major NASA actions significantly affecting the quality of the human environment, the evaluations required above will be included in any statement prepared under Section 102(2)(C) of the National Environmental Policy Act.

(9) In accordance with § 1216.202(b), the Assistant Associate Administrator for Facilities Management, NASA Headquarters, will conduct periodic on-site reviews to assure that the action is carried out in accordance with the stated findings and plans for the proposed action, in compliance with the Executive orders.

[44 FR 1089, Jan. 4, 1979, as amended at 53 FR 9760, Mar. 25, 1988]

Subpart 1216.3—Procedures for Implementing the National Environmental Policy Act (NEPA)

AUTHORITY: The National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2451 *et seq.*); the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*); the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*); sec. 309 the Clean Air Act, as amended (42 U.S.C. 7609); E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977); the Council on Environmental Quality NEPA Regulations (40 CFR Part 1500-1508); and E.O. 12114, Jan. 4, 1979 (44 FR 1957).

SOURCE: 44 FR 44485, July 30, 1979, unless otherwise noted.

§ 1216.300 Scope.

This subpart sets forth NASA procedures implementing the provisions of section 102(2) of the National Environmental Policy Act (NEPA). The NASA procedures of this subpart supplement the regulations of the Council on Environmental Quality (43 FR 55978) which establish uniform procedures for implementing those provisions of NEPA.

§ 1216.301 Applicability.

(a) This subpart is applicable to NASA Headquarters and field installations.

(b) The procedures established by this subpart apply to all NASA actions which may have an impact on the quality of the environment. These actions may fall within any of the four NASA budget categories: Research and Development (R&D), Construction of Facilities (CoF), Research and Program Management (R&PM), and Space Flight Control and Data Communications (SFCDC), or, if not involving budget authority or other congressional approval, may be separate from the categories.

[44 FR 44485, July 30, 1979, as amended at 53 FR 9760, Mar. 25, 1988]

§ 1216.302 Definition of key terms.

The definitions contained within Part 1508, *Terminology and Index*, CEQ Regulations, 43 FR 55978, apply to Subpart 1216.3. Additional definitions, necessary for the purpose of this subpart, are as follows:

(a) *Budget line items*. The individual items in the annual NASA authorization legislation which are used here to classify the range of NASA actions. The four main budget line items are:

(1) *Research and Development* (*R&D*). Those activities directed towards attaining the objectives of a specific mission, project, or program. All NASA's aeronautics and space program elements are categorized within the R&D program categories. R&D funds are expended chiefly for contracted research and development and for research grants. Some R&D funds are also expended in support of in-house research (e.g., equipment purchases and other research support, but *not* civil service salaries).

(2) *Research and Program Management* (*R&PM*). Those activities directed towards the general support of the NASA institution charged with the conduct of the aeronautics and space program. R&PM funds are expended for the NASA civil service work force (both for performing in-house R&D and for planning, managing, and supporting contractor and grantee R&D), and for other general supporting functions.

(3) *Construction of Facilities* (*C of F*). Those activities directed towards construction of new facilities; repair, rehabilitation, and modification of existing facilities; acquisition of related facility equipment; design of facilities projects; and advance planning related to future facilities needs.

(4) *Space Flight, Control and Data Communications* (*SFCDC*). Has similar scope to R&D but covers activities which are primarily of a production and operational nature related to space flight. The content includes the national fleet of Space Shuttle orbiters, including main engines, launch site and mission operations, initial spares, production tooling and supporting activities, launch operations and tracking and data acquisition.

(b) *Construction of facilities project*. The consolidation of applicable specific individual types of facility work, including related collateral equipment, which is required to fully reflect all of the needs, generally relating to one facility, which have been or may be generated by the same set of events or circumstances which are required to be accomplished at one time in order to provide for the planned initial operational use of the facility or a discrete portion thereof. Facility projects are subject to the NASA decision processes of § 1216.304.

(c) *Environmental analysis*. The analysis of the environmental effects of proposed actions, including alternative proposals. The analyses are carried out from the very earliest of planning studies for the action in question, and are the materials from which the more formal environmental assessments, environmental impact statements, and public record of decisions are made.

(d) *Institutional action*. An action to establish, change, or terminate an aspect of the NASA institution, defined as the total NASA resource (plant, employees, skills).

(e) *R&D project*. A discrete research and development activity, with a scheduled beginning and ending, which normally involves one of the following primary purposes:

(1) The design, development, and demonstration of major advanced technology hardware items;

(2) The design, construction, and operation of a new launch vehicle (and associated ground support) during its research and development phase; and

(3) The construction and operation of one or more aeronautics or space vehicles (and necessary ground support) in order to accomplish a scientific or technical objective. R&D projects are each subelements in the NASA R&D budget line item. R&D projects are subject to the decision processes of § 1216.304.

(f) *SFCDC project*. R&D type projects authorized under the SFCDC budget line item.

[44 FR 44485, July 30, 1979, as amended at 53 FR 9761, Mar. 25, 1988]

§ 1216.303 Responsibilities of NASA officials.

(a) The Associate Administrator for Management or designee, who is responsible for developing the procedures of this subpart and for ensuring that environmental factors are properly considered in all NASA planning and decisionmaking, shall:

(1) Monitor these processes to ensure that the agency procedures are achieving their purposes;

(2) Advise line management and inform NASA employees of technical and management requirements of environmental analysis, of appropriate expertise available in and out of NASA, and—with the assistance of the NASA General Counsel—of relevant legal developments; and

(3) Consolidate and transmit to the appropriate parties NASA comments on environmental impact statements and other environmental reports prepared by other agencies.

(b) Officials-in-Charge of Headquarters Offices (hereafter termed "Headquarters officials") are responsible for implementing the procedures established by these regulations for the consideration and documentation of the environmental aspects of the decision processes in their respective areas of responsibility.

(c) The Assistant Administrator for Congressional Relations Office is responsible for ensuring the legislative environmental impact statements accompany NASA recommendations or reports on proposals for legislation submitted to Congress. The Associate Administrator for Management, the NASA Comptroller, and the General Counsel will provide guidance as required.

[44 FR 44485, July 30, 1979, as amended at 53 FR 9761, Mar. 25, 1988]

AGENCY PROCEDURES

§ 1216.304 Major decision points.

The possible environmental effects of a proposed action must be considered, along with technical, economic, and other factors, in the earliest planning. At that stage, the responsible Headquarters official shall begin the necessary steps to comply with all the requirements of section 102(2) of the National Environmental Policy Act of 1969. Major NASA activities, particularly R&D (or SFCDC) and facility projects, generally have four distinct phases: The conceptual study phase; the detailed planning/definition phase; the development/construction phase; and the operation phase. (Other NASA activities have fewer, less well-defined phases, but can still be characterized by phases representing general or feasibility study, detailed planning or definition, and implementation.) Environmental documentation shall be linked to major decision points as follows:

(a) Completion of an environmental assessment and the determination as to whether an environmental impact statement is required must be made prior to the decision to proceed from the conceptual study phase to the detailed planning/definition phase of the proposed action. For example, this determination must be concurrent with:

(1) Proposal of an R&D (or SFCDC) project for detailed planning and project definition;

(2) Proposal of a major Construction of Facilities project for detailed planning and project definition;

(3) Proposal of an institutional action (other than a facility project) for detailed planning and definition; and

(4) Proposal of a plan to define changes in an approved project.

(b) The final environmental impact statement (EIS) should be completed and circulated prior to the decision to proceed from the detailed planning/definition phase to the development/construction (or implementation) phase of the proposed action. For example, the EIS should be completed by, and incorporated with:

(1) Proposal of an R&D (or SFCDC) project for development/construction;

(2) Proposal of a major Construction of Facilities project for development/construction;

(3) Proposal to undertake a significant institutional action (other than a facility project); and

(4) Proposal to implement a program change.

[44 FR 44485, July 30, 1979, as amended at 53 FR 9761, Mar. 25, 1988]

§ 1216.305 Criteria for actions requiring environmental assessments.

(a) Whether a proposed NASA action within the meaning of the CEQ

Regulations (43 FR 55978) requires the preparation of an environmental assessment, an environmental impact statement, both, or neither, will depend upon the scope of the action and the context and intensity of any environmental effects expected to result. A NASA action shall require the preparation of an environmental assessment (§§ 1501.3 and 1508.9 of the CEQ Regulations) provided the action is not one normally requiring an environmental impact statement (paragraph (c)) or it is not categorically excluded from the requirement for an environmental assessment and an environmental impact statement (paragraph (d)).

(b) Specific NASA actions normally requiring an environmental assessment are:

(1) Specific spacecraft development and flight projects in space science.

(2) Specific spacecraft development and flight projects in space and terrestrial applications.

(3) Specific experimental projects in aeronautics and space technology and energy technology applications.

(4) Development and operation of new space transportation systems and advanced development of new space transportation and spacecraft systems.

(5) Reimbursable launches of non-NASA spacecraft or payloads.

(6) Major Construction of Facilities projects.

(7) Actions to alter ongoing operations at a NASA installation which could lead, either directly or indirectly, to natural or physical environmental effects.

(c) NASA actions expected to have a significant effect upon the quality of the human environment shall require an environmental impact statement. For these actions an environmental assessment is not required. Criteria to be used in determining significance are given in § 1508.27 of the CEQ Regulations (43 FR 55978). Specific NASA actions requiring environmental impact statements, all in the R&D budget category, are as follows:

(1) Development and operation of new launch vehicles.

(2) Development and operation of space vehicles likely to release substantial amounts of foreign materials into the earth's atmosphere, or into space.

(3) Development and operation of nuclear systems, including reactors and thermal devices used for propulsion and/or power generation. Excluded are devices with millicurie quantities or less of radioactive materials used as instrument detectors and small radioisotope heaters used for local thermal control, provided they are properly contained and shielded.

(d) NASA actions categorically excluded from the requirements to prepare either an environmental assessment or an EIS (§ 1508.4 of the CEQ Regulations) fit the following criteria: They are each sub-elements of an approved broadbased level-of-effort NASA science and technology program (basic research, applied research, development of technology, ongoing mission operations), facility program, or institutional program; and they are each managed relatively independently of other related sub-elements by means of separate task orders, Research and Technology Operating Plans, etc. Specific NASA actions fitting these criteria and thus categorically excluded from the requirements for environmental assessments and environmental impact statements are:

(1) R&D (or SFCDC) activities in space science (e.g., Physics and Astronomy Research and Analysis, Planetary Exploration Mission Operations and Data Analysis) other than specific spacecraft development and flight projects.

(2) R&D activities in space and terrestrial applications (e.g., Resource Observations Applied Research and Data Analysis, Technology Utilization) other than specific spacecraft development and flight projects.

(3) R&D activities in aeronautics and space technology and energy technology applications (e.g., Research and Technology Base, Systems Technology Programs) other than experimental projects.

(4) R&D (or SFCDC) activities in space transportation systems engineering and scientific and technical support operations, routine transportation operations, and advanced studies.

(5) R&D (or SFCDC) activities in space tracking and data systems.

(6) Facility planning and design (funding).

(7) Minor construction of new facilities including rehabilitation, modification, and repair.

(8) Continuing operations of a NASA installation at a level of effort, or altered operations, provided the alterations induce only social and/or economic effects but no natural or physical environmental effects.

(e) Even though an action may be categorically excluded from the need for a formal environmental assessment or environmental impact statement, it is not excluded from the requirement for an environmental analysis conducted during the earliest planning phases. If that analysis shows that the action deviates from the criteria for exclusion and it is concluded that there may be significant environmental effects, an environmental assessment must be carried out. Based upon that assessment, a determination must then be made whether or not to prepare an environmental impact statement.

[44 FR 44485, July 30, 1979, as amended at 53 FR 9761, Mar. 25, 1988]

§ 1216.306 Preparation of environmental assessments.

(a) For each NASA action meeting the criteria of 14 CFR 1216.305(b) and for other actions as required, the responsible Headquarters official shall prepare an environmental assessment (40 CFR 1501.3 and 1508.9 of the CEQ Regulations) and, on the basis of that assessment, determine if an EIS is required; except where action meeting the criteria is strictly of a local nature under the purview of the Field Installation Director.

(b) If the determination is that no environmental impact statement is required, the Headquarters official or Field Installation Director, shall, in coordination with the Associate Administrator for Management, prepare a "Finding of No Significant Impact." (See 40 CFR 1508.13 of the CEQ Regulations.) The "Finding of No Significant Impact" shall be made available to the affected public through direct distribution and publication in the FEDERAL REGISTER, or coordinated with the State Single Point of Contact pursuant to E.O. 12372, as amended, "Intergovernmental Review of Federal Programs," as appropriate.

(c) If the determination is that an environmental impact statement is required, the Headquarters official shall proceed with the "notice of intent to prepare an EIS" (see 40 CFR 1508.22 of the CEQ Regulations). The Headquarters official shall transmit this notice to the Associate Administrator for Management for review and subsequent publication in the FEDERAL REGISTER (see 40 CFR 1507.3(e) of the CEQ Regulations). The Headquarters official shall then apply procedures set forth in 14 CFR 1216.307 to determine the scope of the EIS and proceed to prepare and release the environmental statement in accordance with the CEQ Regulations and the procedures of this subpart.

(d) Environmental assessments may be prepared for any actions, even those which meet the criteria for environmental impact statements (§ 1216.305(c)) or for categorical exclusion (§ 1216.305(d)), if the responsible Headquarters official believes that the action may be an exception or that an assessment will assist in planning or decisionmaking.

[44 FR 44485, July 30, 1979, as amended at 53 FR 9761, Mar. 25, 1988]

§ 1216.307 Scoping.

The responsible Headquarters official shall conduct an early and open process for determining the scope of issues to be addressed in environmental impact statements and for identifying the significant issues related to a proposed action. The elements of the scoping process are defined in § 1501.7 of the CEQ Regulations and the process must include considerations of the range of actions, alternatives, and impacts discussed in § 1508.25 of the CEQ Regulations. The range of environmental categories to be considered in the scoping process shall include, but not be limited to:

(a) Air quality;

(b) Water quality;

(c) Waste generation, treatment, transportation disposal and storage;

(d) Noise, sonic boom, and vibration;

(e) Toxic substances;

(f) Biotic resources;

(g) Radioactive materials and nonionizing radiation;

(h) Endangered species;

(i) Historical, archeological, and recreational factors;

(j) Wetlands and floodplains; and

(k) Economic, population and employment factors, provided they are interrelated with natural or physical environmental factors.

§ 1216.308 Preparation of draft statements.

(a) The responsible Headquarters official shall prepare the draft environmental impact statement in the manner provided in 40 CFR Part 1502 of the CEQ Regulations and shall submit the draft statement and any attachments to the Associate Administrator for Management for NASA review prior to any formal review outside NASA. This submission shall be accompanied by a list of Federal, State, and local officials (40 CFR Part 1503 of the CEQ Regulations) and a list of other interested parties (40 CFR 1506.6 of the CEQ Regulations) from whom comments should be requested.

(b) After the NASA review is completed, the Associate Administrator for Management shall submit the approved draft statement to the Environmental Protection Agency (EPA), Office of Federal Activities, and shall seek the views of appropriate agencies and individuals in accordance with 40 CFR Part 1503 and § 1506.6 of the CEQ Regulations.

(c) Comments received shall be provided to the originating official for consideration in preparing the final statement. To the extent possible, requirements for review and consultation with other agencies on environmental matters established by statutes other than NEPA, such as the review and consultation requirements of the Endangered Species Act of 1973, as amended, should be met prior to or through this review process (§ 1216.320).

[44 FR 44485, July 30, 1979, as amended at 53 FR 9761, Mar. 25, 1988]

§ 1216.309 Public involvement.

(a) Interested persons can get information on NASA environmental impact statements and other aspects of NASA's NEPA process by contacting the Assistant Associate Administrator for Facilities Management, Code NX, NASA Headquarters, Washington, DC 20546, 202-453-1965. Pertinent information regarding any aspect of the NEPA process may also be mailed to the above address.

(b) Responsible Headquarters officials and NASA Field Installation Directors shall identify those persons, community organizations, and environmental interest groups who may be interested or affected by the proposed NASA action and who should be involved in the NEPA process. They shall submit a list of such persons and organizations to the Associate Administrator for Management at the same time they submit:

(1) A recommendation regarding a "Finding of No Significant Impact,"

(2) A "Notice of Intent to Prepare an EIS,"

(3) A recommendation for public hearings,

(4) A preliminary draft EIS,

(5) A preliminary final EIS,

(6) Other preliminary environmental documents (14 CFR 1216.321(d)).

(c) The Associate Administrator for Management may modify such lists referred to in paragraph (b) of this section as appropriate to ensure that NASA shall comply, to the fullest extent practicable, with 40 CFR 1506.6 of the CEQ Regulations and section 2-4(d) of Executive Order 12114.

(d) The decision whether to hold public hearings shall be made by the Associate Administrator for Management in consultation with the General Counsel.

[53 FR 9762, Mar. 25, 1988]

§ 1216.310 Preparation of final statements.

(a) After conclusion of the review process with other Federal, State, and local agencies and the public, the responsible Headquarters official shall consider all suggestions, revise the statement as appropriate, and forward the proposed final statement to the Associate Administrator for Management. The Associate Administrator for Management shall submit the approved final statement to the EPA Office of Federal Activities, to all parties who commented, and to other interested parties in accordance with CEQ Regulations.

(b) Each draft and final statement, the supporting documentation, and the record of decision shall be available for public review and copying at the office of the responsible Headquarters official, or at the office of a suitable designee. Copies of draft and final environment impact statements shall also be available at the NASA Information Center, 600 Independence Avenue, SW., Washington, DC 20546; at information centers at appropriate NASA field installations; and at appropriate state and local clearinghouses.

[44 FR 44485, July 30, 1979, as amended at 53 FR 9762, Mar. 25, 1988]

§ 1216.311 Record of the decision.

At the time of the decision on the proposed action, the originating Headquarters official shall consult with the Associate Administrator for Management and prepare a concise public record of the decision. (See 40 CFR 1505.2 of the CEQ Regulations.)

[53 FR 9762, Mar. 25, 1988]

§ 1216.312 Timing.

(a) Environmental impact statements are drafted when the Headquarters official has determined that the statement shall be prepared. No decision to proceed to the development/construction (or implementation) phase of the proposed action (the major decision point of § 1216.304(b)) shall be made by NASA until the later of the following dates (§ 1506.10 of the CEQ Regulations);

(1) Ninety days after publication of an EPA notice of a NASA draft EIS.

(2) Thirty days after publication of an EPA notice of a NASA final EIS.

(b) When necessary to comply with other specific statutory requirements, NASA shall consult with and obtain from EPA time periods other than those specified by the Council for timing of agency action.

§ 1216.313 Implementing and monitoring the decision.

(a) Section 1505.3 of the CEQ Regulations provides for agency monitoring to assure that mitigation measures and other commitments associated with the decision and its implementation and described in the EIS are carried out and have the intended effects.

(b) The responsible Headquarters official shall, as necessary, conduct the required monitoring and shall provide periodic reports as required by the Associate Administrator for Management.

(c) If the monitoring activity indicates that resulting environmental effects differ from those described in the current documents, the Headquarters official shall reassess the environmental impact and consult with the Associate Administrator for Management to determine the need for additional mitigation measures and whether to prepare a supplement to the EIS (see 40 CFR 1502.9 of the CEQ Regulations).

[44 FR 44485, July 30, 1979, as amended at 53 FR 9762, Mar. 25, 1988]

§ 1216.314 Tiering.

Actions which are the subject of an environmental impact statement and which represents projects of broad scope may contain within them component actions of narrower scope, perhaps restricted to individual sites of activity or sequential stages of a mission, and which themselves may require environmental assessments and, where necessary, environmental impact statements. The CEQ Regulations provide that agencies may use "Tiering" (§ 1508.28 of the CEQ Regulations) of environmental impact statements to relate such broad and narrow actions. When employing tiering, Headquarters officials shall, by reference, make maximum use of environmental documentation already available, and avoid repetition.

§ 1216.315 Processing legislative environmental impact statements.

(a) Preparation of a legislative environmental impact statement shall conform to the requirements of 40 CFR 1506.8 of the CEQ Regulations. The responsible Headquarters official, in coordination with the Associate Administrator for Management, shall identify those NASA recommendations or reports on legislation that would require preparation of environmental impact statements in accordance with criteria set forth in 14 CFR 1216.305.

(b) For the purposes of this provision, "legislation" not only excludes requests for appropriations (40 CFR 1508.17 of the CEQ Regulations), but also excludes the annual authorization bill submitted to the Congress.

[53 FR 9762, Mar. 25, 1988]

§ 1216.316 Cooperating with other agencies and individuals.

(a) The Associate Administrator for Management, in coordination with the Associate Administrator for External Relations, shall ensure that NASA officials have an opportunity to cooperate with other agencies and individuals. He/she shall keep abreast of the activities of Federal, state, and local agencies, particularly activities in which NASA has expertise or jurisdiction by law (see 40 CFR 1508.15 of the CEQ Regulations). He/she shall inform the responsible Headquarters official of the need for cooperation as necessary.

(b) At the request of the Associate Administrator for Management, Headquarters officials shall initiate discussions with another Federal agency concerning those activities which may be the subject of that agency's EIS on which NASA proposes to comment.

(c) At the request of the Associate Administrator for Management, the responsible Headquarters official shall, in the interest of eliminating duplication, prepare joint analyses, assessments, and statements with state and local agencies. These joint environmental documents shall conform with the requirements of these procedures and overall NASA policy.

(d) Because of the uniqueness of the NASA's aerospace activities, it is unlikely that NASA will have the opportunity to "adopt" environmental statements prepared by other agencies (40 CFR 1506.3 of the CEQ Regulations). However, should the responsible NASA offical wish to adopt a Federal draft or final environmental impact statement or portion thereof, he/she shall consult with the Associate Administrator for Management to determine whether that statement meets NASA requirements.

(e) From time to time, there may be disagreements between NASA and other Federal agencies regarding which agency has primary responsibility to prepare an environmental impact statement in which both parties are involved. The Headquarters official with primary responsibility for the activity in question shall consult with the Associate Administrator for Management to resolve such questions in accordance with 40 CFR 1501.5 of the CEQ Regulations.

(f) Responsibility for the environmental analyses and any necessary environmental assessments and environmental impact statements required by permits, leases, easements, etc., proposed for issuance to non-Federal applicants rests with the Headquarters official responsible for granting of that permit, lease, easement, etc. The responsible Headquarters official shall consult with the Associate Administrator for Management for advice on the type of environmental information needed from the applicant and on the extent of the applicant's participation in the necessary environmental studies and their documentation.

[53 FR 9762, Mar. 25, 1988]

§ 1216.317 Classified information.

Environmental assessments and impact statements which contain classified information to be withheld from public release in the interest of national security or foreign policy shall be organized so that the classified portions are appendices to the environmental document itself. The classified portion shall not be made available to the public.

§ 1216.318 Deviations.

From time to time there will arise good and valid reasons for a deviation from these procedures. These procedures are not intended to be a substitute for sound professional judgment. Accordingly, if and as problems arise which justify a deviation, the pro-

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posed deviation and supporting rationale shall be forwarded to the Associate Administrator for Management. Unless such documentation is received, it will be assumed that each planning and decisionmaking action is in accordance with these procedures.

[53 FR 9763, Mar. 25, 1988]

OTHER REQUIREMENTS

§ 1216.319 Environmental resources document.

Each Field Installation Director shall ensure that there exists an environmental resources document which describes the current environment at that field installation, including current information on the effects of NASA operations on the local environment. This document shall include information on the same environmental effects as included in an environmental impact statement (see 14 CFR 1216.307). This document shall be coordinated with the Associate Administrator for Management and shall be published in an appropriate NASA report category for use as a reference document in preparing other environmental documents (e.g., environmental impact statements for proposed actions to be located at the NASA field installation in question). The Director of each NASA field installation shall ensure that existing resource documents are reviewed and updated, if necessary, by December 31, 1980, and at appropriate intervals thereafter.

[53 FR 9763, Mar. 25, 1988]

§ 1216.320 Environmental review and consultation requirements.

(a) Headquarters officials and Field Installation Directors shall, to the maximum extent possible, conduct environmental analyses, assessments, and any impact statement preparation concurrently with environmental reviews required by the laws and regulations listed below:

(1) Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470(*f*)) requires identification of National Register properties, eligible properties, or properties which may be eligible for the National Register within the area of the potential impact of a NASA proposed action. Evaluation of the impact of the NASA action on such properties shall be discussed in draft environmental impact statements and transmitted to the Advisory Council on Historic Preservation for comments.

(2) Section 7 of the Endangered Species Act (16 U.S.C. 1531 et seq.) requires indentification of and consultation on aspects of the NASA action that may affect listed species or their habitat. A written request for consultation, along with the draft statement, shall be conveyed to the Regional Director of the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate, for the Region where the action will be carried out.

(3) Executive Order 11988 (Floodplains Management) and Executive Order 11990 (Wetlands), as amended, and implemented by 14 CFR Subpart 1216.2—*Floodplains and Wetlands Management*, prescribe procedures to avoid adverse impacts associated with the occupancy and modification of floodplains and wetlands and require identification and evaluation of actions which are proposed for location in or which may affect a floodplain or wetland. A comparative evaluation of such actions shall be discussed in draft environmental impact statements and transmitted to appropriate State Single Point of Contact for comments.

(b) Other environmental review and consultation requirements peculiar to NASA, if any, may be identified in the NASA environmental impact implementation handbook.

[44 FR 44485, July 30, 1979, as amended a 53 FR 9763, Mar. 25, 1988]

§ 1216.321 Environmental effects abroad of major Federal actions.

(a) In accordance with these procedures and E.O. 12114, "Environmental Effects Abroad of Major Federal Actions" (44 FR 1957), dated January 4, 1979, the Headquarters official shall analyze actions under his/her cognizance with due regard for the environmental effects abroad of such actions. The Headquarters official shall consider whether such actions involve:

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(1) Potential environmental effects on the global commons (i.e., oceans and the upper atmosphere);

(2) Potential environmental effects on a foreign nation not participating with or not otherwise involved in the NASA activity;

(3) The export of products or facilities producing products (or emission/effluents) which in the United States are prohibited or strictly regulated because their effects on the environment create a serious public health risk. The Associate Administrator for Management will provide additional guidance regarding the types of chemical, physical, and biological agents involved.

(4) A physical project which, in the U.S., would be prohibited or strictly regulated by Federal law to protect the environment against radioactive substances;

(5) Potential environmental effects on natural and ecological resources of global importance and which the President in the future may designate (or which the Secretary of State designates pursuant to international treaty). A list of any such designations will be available from the Associate Administrator for Management.

(b) Prior to decisions (§ 1216.304) on any action falling into the categories specified in paragraph (a), the Headquarters official shall make a determination whether such action may have a significant environmental effect abroad.

(c) If the Headquarters official determines that the action will not have a significant environmental effect abroad, he/she shall prepare a memorandum for the record which states the reasoning behind such a determination. A copy of the memorandum shall be forwarded to the Associate Administrator for Management. Note that these procedures do not allow for categorical exclusions (E.O. 12114, section 2-5(d)).

(d) If the Headquarters official determines that an action may have a significant environmental effect abroad, he/she shall consult with the Associate Administrator for Management and the Director, International Relations Division. The Associate Administrator for Management, in coordination with the Director, International Relations Division, shall (as specified in E.O. 12114) make a determination whether the subject action requires:

(1) An environmental impact statement,

(2) Bilateral or multilateral environmental studies, or

(3) Concise reviews of environmental issues.

(e) When informed of the determination of the Associate Administrator for Management, the Headquarters official shall proceed to take the necessary actions in accordance with these implementing procedures.

(f) The Associate Administrator for Management shall, in coordination with the Associate Administrator for External Relations, determine when an affected nation shall be informed regarding the availability of documents referred to in paragraph (d) of this section and coordinate with the Department of State all NASA communications with foreign governments concerning environmental matters as related to E.O. 12114.

[44 FR 44485, July 30, 1979, as amended at 53 FR 9763, Mar. 25, 1988]

PART 1221—THE NASA SEAL AND OTHER DEVICES, AND THE CONGRESSIONAL SPACE MEDAL OF HONOR

Subpart 1221.1—NASA Seal, Insignia, Logotype Insignia, Program and Astronaut Badges, and Flags, and the Agency's Unified Visual Communications System

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Subpart 1221.1—NASA Seal, Insignia, Logotype Insignia, Program and Astronaut Badges, and Flags, and the Agency's Unified Visual Communications System

AUTHORITY: 42 U.S.C. 2472(a) and 2473(c)(1).

SOURCE: 52 FR 45811, Dec. 2, 1987, unless otherwise noted.

§ 1221.100 Scope.

This subpart sets forth the policy governing the use of the NASA Seal, the NASA Insignia, the NASA Logotype Insignia, NASA Program and Astronaut Badges, and the NASA Flags. This subpart also establishes and sets forth the concept and scope of the NASA Unified Visual Communications System and prescribes the policy and guidelines for implementation of the system.

§ 1221.101 Policy.

(a) The NASA Seal, the NASA Insignia, the NASA Logotype Insignia, NASA Program and Astronaut Badges, and the NASA Flags and the Agency's Unified Visual Communications System, as prescribed in § 1221.102 through § 1221.110 of this subpart shall be used exclusively to represent NASA, its programs, projects, functions, activities, or elements. The use of any devices other than those provided by or subsequently approved in accordance with the provisions of this subpart is prohibited.

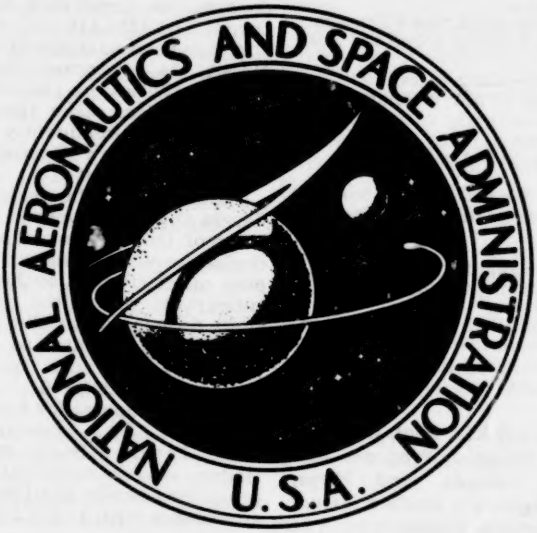
(b) The use of the devices prescribed herein shall be governed by the provisions of this subpart. The use of the devices prescribed herein for any purpose other than as authorized by this subpart is prohibited. Their misuse shall be subject to the penalties authorized by statute, as set forth in § 1221.117 and shall be reported as provided in § 1221.118.

(c) Any proposal for a new NASA Insignia, NASA Logotype Insignia, NASA Program Badge and Astronaut Badge, or for modification to those prescribed herein shall be processed in accordance with § 1221.116.

§ 1221.102 Establishment of the NASA Seal.

The NASA Seal was established by Executive Order 10849 (24 FR 9559), November 27, 1959, as amended by Executive Order 10942 (24 FR 4419), May 22, 1961. The NASA Seal, established by the President, is the Seal of the agency and symbolizes the achievements and goals of NASA and the United States in aeronautical and space activities. The NASA Seal shall be used as set forth in § 1221.111.

FIGURE A


NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
U.S.A.

The NASA Seal

Technical Description:

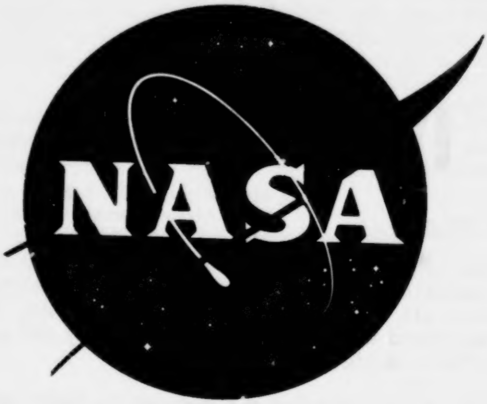
The official seal of the National Aeronautics and Space Administration is a disc of blue sky strewn with white stars, dexter a large yellow sphere bearing a red flight symbol apex in upper sinister and wings enveloping and casting a brown shadow upon the sphere, all partially encircled with white horizontal orbit, in sinister a small light blue sphere; circumscribing the disc a white band edged gold inscribed "National Aeronautics and Space Administration U.S.A." in red letters.

§ 1221.103 Establishment of the NASA Insignia.

The NASA Insignia was designed by the Army Institute of Heraldry, and approved by the Commission of Fine Arts and the NASA Administrator.

It symbolizes NASA's role in aeronautics and space in the early years of the agency and has been retired. It is used only in an authentic historical context, and only with prior written approval of the NASA Administrator.

FIGURE B



The NASA Insignia

REPRODUCTION:

Black-on-white or single color:	As shown
Two-color:	Dark blue sky background; solid wing configuration; white inner elliptical flight path, stars, and letters NASA.

SIZE:

The Insignia may be reproduced or used in various sizes. Size to be determined on basis of (a) desired effect for visual identification or publicity purposes, (b) relative size of the object on which insignia is to appear, and (c) consideration of any design, layout, reproduction, or other problems involved.

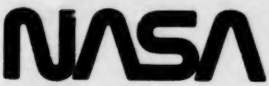
RESTRICTION:

The NASA Insignia will not be used for any purpose without the written approval of the Administrator.

§ 1221.104 Establishment of the NASA Logotype Insignia.

The NASA Logotype Insignia, to be referred to as the NASA Logotype, was established by the NASA Administrator as the signature and design element for all visual communications formerly reserved for the NASA Insignia. The NASA Logotype was developed under the Federal Design Improvement Program initiated by the President in 1972 and approved by the Commission of Fine Arts in October 1975. The NASA Logotype shall be used as set forth in § 1221.112, the NASA Graphics Standards Manual, and any related NASA directive or specification approved by the NASA Administrator and published subsequent hereto.

FIGURE C



The NASA Logotype Insignia

This logotype is the central element in NASA's visual communications system. Through consistent and repetitive use as a signature device and design element in all of NASA's visual communications, the logotype becomes a visual shorthand which identifies the agency and symbolically embodies its activities, achievement and goals.

In the logotype, the letters N-A-S-A are reduced to their most simplified form. The strokes are all of one width, envoking the qualities of unity and technical precision. Elimination of cross-strokes in the two "A" letters imparts a vertical thrust to the logotype and lends it a quality of uniqueness and contemporary character.

Technical Description:

The NASA Logotype design is solid stroke letterforms, shown freestanding horizontally against a solid neutral background.

The Logotype sizes are based on (a) desired effect, (b) relative size of object on which applied, and (c) considerations of any design layout and reproduction. See NASA Graphics Standards Manual.

It is reproduced only photographically except that, for larger applications, the Logotype is reproduced using the grid shown in the Manual. Otherwise, the Logotype is never reproduced mechanically or by hand.

The preferred color of the NASA Logotype is NASA red (PMS 179), used only when a second color is available and appropriate. Against a white background, the Logotype may be shown in NASA red, black, or NASA warm gray. For background of other values, the Manual is to be consulted and followed.

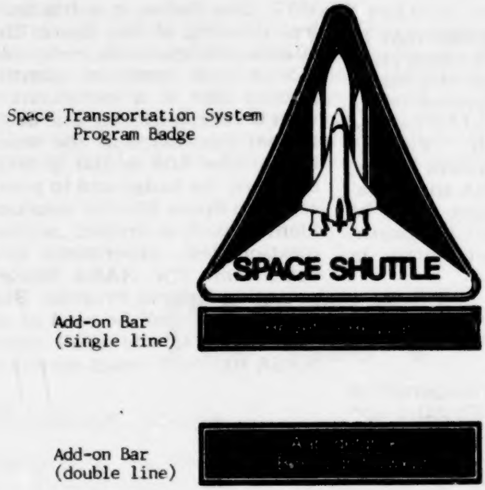
§ 1221.105 Establishment of the NASA Program Badges.

A separate and unique badge may be designed and approved in connection with or in commemoration of a major NASA program. Each approved badge shall be officially identified by its title such as "Apollo," "Skylab," "Viking," "Space Transportation System (Space Shuttle)," or a major NASA anniversary. NASA Program Badges shall be used as set forth in § 1221.113 pursuant to approval as set forth in § 1221.116.

§ 1221.106 Establishment of the NASA Space Transportation System Program Badge and Add-on Bar.

The NASA Space Transportation System Program (Space Shuttle) and Add-on Bar were established by the NASA Administrator on February. 18, 1977. The Badge is a triangular stylized drawing of the Space Shuttle in launch configuration designed to provide overall program identity. The Add-on Bar is a rectangular patch, with border, enclosing one or two lines of text positioned at the base of the badge. The Add-on Bar is designed to augment the badge and to provide subordinate Space Shuttle mission-related identity such as project, payload, organization, text, experiment, system, or subsystem. The NASA Space Transportation System Program Badge and Add-on Bar shall be used as set forth in § 1221.114, and shall conform to NASA standard design specifications.

FIGURE D



DESCRIPTION:

Space Transportation System
Program Badge

The official identification device for the Space Transportation System Program is a triangular badge, pointed upward, with a stylized drawing of the Space Shuttle in launch configuration; white and gray shadow edge; symmetrically enclosed against two shades of blue background; gold and white edged; inscribed horizontally at the base "SPACE SHUTTLE" in white letters.

Add-on Bar

The official Add-on Bar augments the NASA Space Transportation System Program Badge to provide mission-related identity. Add-on Bars are rectangular; gold and white edged with one or two lines of text on a red band. Add-on Bars are positioned horizontally at the base of the badge.

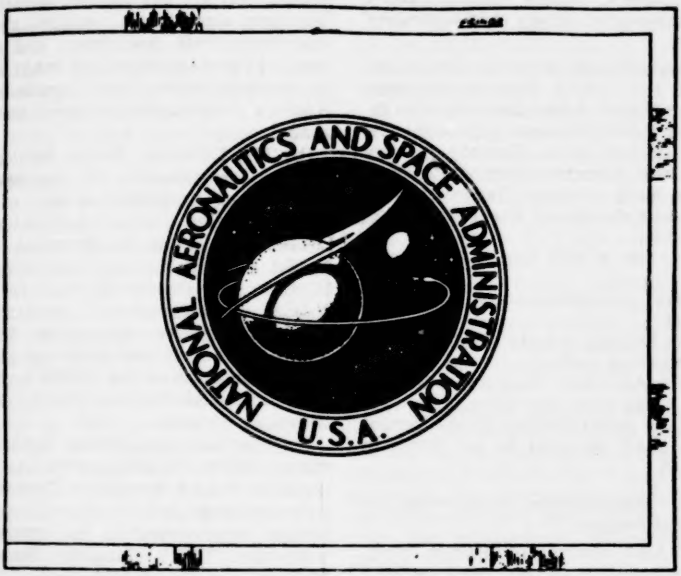
DESIGN SPECIFICATIONS:

Dimension and color specifications for the Badge and Add-on Bar are available from NASA installation graphics coordinators.

§ 1221.107 Establishment of the NASA Flag.

The NASA Flags for interior and exterior use were created by the NASA Administrator in January 1960. Complete design, size, and color of the NASA interior and exterior flags for manufacturing purposes are detailed in U.S. Army QMG Drawing 5-1-269; revision September 14, 1960. The NASA Flags shall be used as set forth in § 1221.115.

FIGURE E



The NASA Flag

REFERENCE:

U.S. Army QMG Drawing 5-1-269; Revision 14 September 1960, Note: Recommend use of Military Specification (MIL F-2692D dated 14 March 1969, as amended) in conjunction with referenced drawing as a guideline for procurement purposes.

Technical Description of Interior Flag:

The color of the National Aeronautics and Space Administration flag will be of blue bernberg taffeta-weave rayon, four (4) feet, four (4) inches on the hoist by five (5) feet, six (6) inches fly. In the center of the color will be the Official Seal of the National Aeronautics and Space Administration thirty inches in diameter. The devices and stars of the Seal will be embroidered by the Bonnaz Process. The color will be trimmed on three edges with a knotted fringe of rayon two and one half (2½) inches wide. Cord and tassels will be of yellow rayon strands. See drawing referenced above for complete details.

Technical Description of Exterior Flag:

NASA flags for external use may be procured in two sizes: 5' x 9'-6" (without fringe) or 10' x 19' (without fringe). Detailed design, colors and size specifications are as set forth in the drawing referenced above.

§ 1221.108 Establishment of the NASA Administrator's, Deputy Administrator's, and Associate Deputy Administrators' Flags.

(a) Concurrently with the establishment of the NASA Flag in January 1960, the NASA Administrator also established NASA Flags to represent the NASA Administrator, Deputy Administrator and Associate Deputy Administrators. Each of these flags conforms to the basic design of the NASA Flag except that:

(1) The size of the flag is 3 feet × 4 feet;

(2) The Administrator's Flag has four stars;

(3) The Deputy Administrator's Flag has three stars; and

(4) The Associate Deputy Administrators' Flags have two stars.

(b) Flags representing these senior officials shall be used as set forth in § 1221.115.

§ 1221.109 Establishment of the NASA Astronaut Badges.

The NASA Astronaut Badge, commonly referred to as the "crew patch," is a separate and unique badge designed in connection with or in commemoration of a manned space flight mission for the particular astronauts involved. Each approved badge shall be identified by its title, such as "Apollo 17 Badge." Collectively, these badges will comprise the NASA Astronaut Badges. The NASA Astronaut Badges shall be used as set forth in § 1221.113 pursuant to approval as set forth in § 1221.116.

§ 1221.110 Establishment of the NASA Unified Visual Communications System.

(a) The NASA Administrator directed the establishment of a NASA Unified Visual Communications System. This system was developed under the Federal Design Improvement Program initiated by the President in May 1972. This system is the agencywide program by which NASA projects a contemporary, business-like, progressive, and forward-looking image through the use of effective design for improved communications. The system provides a professional and cohesive NASA identity by imparting continuity of graphics design in all layout, reproduction art, stationery, forms, publications, signs, films, vehicles, aircraft and spacecraft markings, and other items. It creates a unified image which is representative and symbolic of NASA's progressive attitudes and programs.

(b) The Director, Public Services Division, is responsible for the development and implementation of the NASA Unified Visual Communications System. With the development of the NASA Unified Visual Communications System, the Public Services Division, NASA Headquarters, created the NASA Graphics Standards Manual which is the official guide for the use and application of the NASA Logotype and the NASA Unified Visual Communications System.

(c) The Director, Public Services Division, NASA Headquarters, has designated a NASA Graphics Coordinator to implement and monitor agencywide design improvements in consonance with the NASA Graphics Standards Manual and the NASA Unified Visual Communications System. The NASA Graphics Coordinator will develop and issue changes and additions to the manual as required and as new design standards and specifications are developed and approved. Copies of the NASA Graphics Standards Manual may be obtained directly from the NASA Graphics Coordinator, NASA Headquarters.

(d) The Director of each Field Installation has designated an official to serve as Graphics Coordinator for his/her installation. The Assistant Administrator for Headquarters Operations has designated an official to serve as Headquarters Graphics Coordinator. Any changes in these assignments shall be reported to the NASA Graphics Coordinator, NASA Headquarters.

(e) Graphics Coordinators are responsible for ensuring compliance with the NASA Graphics Standards Manual and the NASA Unified Visual Communications System for their respective installations.

[52 FR 45811, Dec. 2, 1987, as amended at 54 FR 32963, Aug. 11, 1989]

§ 1221.111 Use of the NASA Seal.

(a) The Executive Officer shall be responsible for custody of the NASA impression Seal and custody of NASA replica (plaques) seals. The NASA Seal is restricted to the following:

(1) NASA award certificates and medals.

(2) NASA awards for career service.

(3) Security credentials and employee identification cards.

(4) NASA Administrator's documents; the seal may be used on documents such as interagency or intergovernmental agreements and special reports to the President and Congress, and on other documents, at the discretion of the NASA Administrator.

(5) Plaques; the design of the NASA Seal may be incorporated in plaques for display in agency auditoriums, presentation rooms, lobbies, offices of senior officials, and on the fronts of buildings occupied by NASA. A separate NASA Seal in the form of a 15-inch, round, bronze colored plaque on a walnut colored wood base is also available, but prohibited for use in the above representational manners. It is restricted to use only as a presentation item by the Administrator and the Deputy Administrator.

(6) The NASA Flag, and the NASA Administrator's and Deputy Administrator's and Associate Deputy Administrators' Flags, which incorporate the design of the Seal.

(7) NASA prestige publications which represent the achievements or missions of NASA as a whole.

(8) Publications (or documents) involving participation by another government agency for which the other government agency has authorized the use of its seal.

(b) Use of the NASA Seal for any purpose other than as prescribed herein is prohibited, except that the Executive Officer may authorize, on a case-by-case basis, the use of the NASA Seal for purposes other than those prescribed when the Executive Officer deems such use to be appropriate.

[52 FR 45811, Dec. 2, 1987, as amended at 55 FR 1404, Jan. 16, 1990]

§ 1221.112 Use of the NASA Logotype.

The NASA Logotype is authorized for use on the following:

(a) *NASA articles.* (1) NASA letterhead stationery.

(2) Films produced by or for NASA.

(3) Wearing apparel and personal property items used by NASA employees in performance of their duties.

(4) Required uniforms of contractor employees when performing public affairs, guard or fire protection duties and similar duties within NASA installations or at other assigned NASA duty stations, and on any required contractor-owned vehicles used exclusively in the performance of these duties, when authorized by NASA contracting officers.

(5) Spacecraft, aircraft, automobiles, trucks, and similar vehicles owned by, leased to, or contractor-furnished to NASA, or produced for NASA by contractors, but excluding NASA-owned vehicles used and operated by contractors for conduct of contractor business.

(6) Equipment and facilities owned by, leased to, or contractor-furnished to NASA, such as machinery, major tools, ground-handling equipment, office and shop furnishings (if appropriate), and similar items of a permanent nature, including those produced for NASA by contractors.

(7) NASA pamphlets brochures, manuals, handbooks, house organs, bulletins, general reports, posters, signs, charts, and items of similar nature for general use, other than those covered in § 1221.111(a) (7) and (8).

(8) Briefcases or dispatch cases issued by NASA.

(9) Certificates (NASA Form 699A and 699B) covering authority to NASA and contractor security personnel to carry firearms.

(10) NASA occupied buildings when the use of the NASA Logotype is more appropriate than use of the NASA Seal.

(b) *Personal articles—NASA employees.* (1) Business calling cards of NASA employees may carry the imprint of the NASA Logotype.

(2) Limited usage on automobiles. If determined appropriate by the cogni-

zant installation official, it is acceptable to place a NASA Logotype sticker on personal automobiles where such identification will facilitate entry or control of such vehicles at NASA installations or parking areas.

(3) Personal items used in connection with NASA employees' recreation association activities.

(4) Items for sale through NASA employees' nonappropriated fund activities subject to paragraph (c) of this section.

(5) NASA employees shall not use the NASA Logotype in any manner that would imply that NASA endorses a commercial product, service or activity or that material of a non-official nature represents NASA's official position.

(c) *Miscellaneous articles.* (1) The manufacture and commercial sale of the NASA Logotype as a separate and distinct device in the form of an emblem, patch, insignia, badge, decal, vinylcal, cloth, metal, or other material which would preclude NASA's control over its use or application is prohibited.

(2) Use of the NASA Uniform Patches, which incorporate the NASA Logotype, is authorized only as prescribed in the NASA Graphics Standards Manual, for NASA personnel and NASA contractor personnel identification.

(3) No approval for use of the NASA Logotype will be authorized when its use can be construed as an endorsement by NASA of a product or service.

(4) Items bearing the NASA Logotype such as souvenirs, novelties, toys, models, clothing, and similar items (including items for sale through the NASA employees' nonappropriated fund activities) may be manufactured and sold only after the NASA Logotype application has been submitted to, and approved by, the Director, Public Services Division, or designee, NASA Headquarters, Washington, DC 20546.

(d) Use of the NASA Logotype for any other purpose other than as prescribed herein is prohibited, except that the Director, Public Services Division, may authorize on a case-by-case basis the use of the NASA Logotype for other purposes when the Director, Public Services Division, deems such use to be appropriate.

§ 1221.113 Use of the NASA Program and Astronaut Badges.

(a) Official NASA Program and Astronaut Badges will be restricted to the uses set forth herein and to such other uses as the Director, Public Services Division, may specifically approve.

(b) Specific approval is given for the following uses:

(1) Use of exact reproductions of a badge in the form of a patch made of cloth or other material, or a decal, or a gummed sticker on articles of wearing apparel and personal property items and

(2) Use of exact renderings of a badge on a coin, medal, plaque, or other commemorative souvenirs.

(c) The manufacture and sale or free distribution of badges for the uses approved, or that may be approved under paragraphs (a) and (b) of this section are authorized.

(d) Portrayal of an exact reproduction of a badge in conjunction with the advertising of any product or service will be approved on a case-by-case basis by the Director, Public Services Division.

(e) The manufacture, sale, or use of any colorable imitation of the design of an official NASA Program or Astronaut Badge will not be approved.

[52 FR 45811, Dec. 2, 1987, as amended at 54 FR 32963, Aug. 11, 1989; 54 FR 53799, Dec. 29, 1989]

§ 1221.114 Use of the NASA Space Transportation System Program Badge and Add-on Bar.

(a) The NASA Space Transportation System Program Badge (Space Shuttle) shall be used in the manner prescribed for NASA Program and Astronaut Badges, § 1221.113. It shall be used exclusively to identify the overall program and represent, identify, and commemorate each Space Shuttle operational mission.

(b) The approved Add-on Bars shall be used exclusively to provide subordinate mission-related identity for NASA projects and payloads including NASA joint projects. Use of

Add-on Bars for non-NASA projects and payloads, including domestic and/or international joint projects, is encouraged.

(c) Add-on Bar proposals for both NASA and non-NASA projects and payloads shall be submitted to the Associate Administrator for Space Flight for review and approval and for compliance with NASA design specifications.

(d) Use of any device other than as prescribed herein is prohibited on NASA uniforms, publications, brochures, posters, charts, signs, and items of a similar nature, to identify the Space Transportation System Program and related missions.

(e) Use of unique payload Program Badges for non-NASA missions is permitted only when the payload has been bought solely by another country other than the United States and when that country has total responsibility for that payload, for example, in the case where Germany had bought a dedicated Spacelab mission and had total responsibility for the payload. Unique payload Program Badge proposals shall be submitted to the Director, International Relations Division, Director, Public Services Division, and the Associate Administrator for Space Flight, NASA Headquarters, for information and comment.

§ 1221.115 Use of the NASA Flags.

(a) The NASA Flag is authorized for use only as follows:

(1) On or in front of NASA installation buildings.

(2) At NASA ceremonies.

(3) At conferences (including display in NASA conference rooms).

(4) At governmental or public appearances of NASA executives.

(5) In private offices of senior officials.

(6) As otherwise authorized by the NASA Administrator or designee.

(7) The NASA Flag must be displayed with the United States Flag. When the United States Flag and the NASA Flag are displayed on a speaker's platform in an auditorium, the United States Flag must occupy the position of honor and be placed at the speaker's right as the speaker faces the audience, with the NASA Flag at the speaker's left.

(b) The NASA Administrator's, Deputy Administrator's, and Associate Deputy Administrators' Flags shall be displayed with the United States Flag in the respective offices of these officials but may be temporarily removed for use at the discretion of the officials concerned.

§ 1221.116 Approval of new or change proposals.

(a) Any proposal to change or modify the emblematic devices set forth herein or to introduce a new emblematic device other than as prescribed herein requires the written approval of the NASA Administrator with prior approval and recommendation of the Director, Public Services Division.

(b) In addition to the written approval of the NASA Administrator, any proposal for a new design or for a modification to the design of the NASA Insignia or NASA Logotype must also be submitted to the Commission of Fine Arts for its advice as to the merit of design. If approved in writing by the NASA Administrator and upon advice received from the Commission of Fine Arts, the NASA Insignia and the use of such NASA Insignia or NASA Logotype must be prescribed in this subpart and published in the FEDERAL REGISTER.

§ 1221.117 Violations.

(a) NASA Seal. Any person who uses the NASA Seal in a manner other than as authorized in this subpart shall be subject to the provisions of Title 18 U.S.C. 1017.

(b) NASA Insignia, NASA Logotype, and NASA Program and Astronaut Badges. Any person who uses the NASA Insignia, NASA Logotype, NASA Program Badges, or NASA Astronaut Badges in a manner other than as authorized in this subpart shall be subject to the provisions of Title 18 U.S.C. 701.

§ 1221.118 Compliance and enforcement.

In order to ensure adherence to the authorized uses of the NASA Seal, the NASA Insignia, the NASA Logotype, NASA Program and Astronaut Badges, and the NASA Flags as provided herein, a report of each suspected violation of this subpart (including the uses of unauthorized NASA Insignias) or of questionable uses of the NASA Seal, the NASA Insignia, the NASA Logotype, NASA Program and Astronaut Badges, or the NASA Flags shall be submitted to the Inspector General, NASA Headquarters, in accordance with NASA Management Instruction 9950.1, "The NASA Investigations Program."

Subpart 1221.2—The Congressional Space Medal of Honor

AUTHORITY: Pub. L. 91-76, September 29, 1969.

SOURCE: 43 FR 15624, Apr. 14, 1978, unless otherwise noted.

§ 1221.200 Scope.

This subpart establishes procedures for nominating an astronaut for the Congressional Space Medal of Honor.

§ 1221.201 Basis for award of the medal.

(a) The standard of award for the Congressional Space Medal of Honor is established by Pub. L. 91-76 (42 U.S.C. 2461) which provides that the President may award the Medal to any "astronaut who in the performance of his duties has distinguished himself by exceptionally meritorious efforts and contributions to the welfare of the Nation and of mankind."

(b) Only one Congressional Space Medal of Honor may be awarded to a person. However, for each succeeding act that would otherwise justify the award of the Medal, the President may award a suitable bar or other device.

(c) The Medal may be awarded to any person who is or has been designated to travel in space and who has distinguished himself or herself while undertaking duties in preparation for, execution of, or subsequent to, but in connection with, a space flight.

(d) The Medal may be awarded for actions occurring before the effective date of this Subpart 1221.2, and, when appropriate, posthumously.

§ 1221.202 Description of the medal.

The description of the Congressional Space Medal of Honor, which was designed by the Institute of Heraldry, U.S. Army, is set forth in Appendix A to this subpart. Each person awarded the Medal also shall receive a citation describing the basis for the award.

§ 1221.203 Nominations.

(a) Formal nominations for award of the Congressional Space Medal of Honor on behalf of NASA will be made by the Administrator to the President.

(b) Any person may recommend to the Administrator that an astronaut be nominated for award of the Medal. Such a recommendation must be in writing, and must describe in concise detail the events believed to warrant award of the Medal. The recommendation should, if appropriate, be accompanied by supporting documentation, such as eyewitness statements, extracts from official records, sketches, photographs, etc.

(c) All recommendations for nominations submitted to the Administrator or made on his own initiative will be referred to the NASA Incentive Awards Board for the purpose of investigating and making findings of fact and giving advice to the Administrator.

(d) Any recommendation involving an astronaut who is a member of the armed services on active duty or who is employed by another agency of the Federal Government but temporarily assigned or detailed to NASA shall also be transmitted to the Secretary of Defense or the head of the employing agency, as appropriate, for his or her recommendation.

(e) The Administrator will forward to the President his recommendation and that of the astronaut's employing agency, as appropriate.

§ 1221.204 Proceedings of the NASA Incentive Awards Board.

The NASA Incentive Awards Board shall thoroughly consider the facts giving rise to a recommendation for nomination and shall prepare a report for the Administrator. The Board should, to the extent practicable, co ordinate its efforts with those of the astronaut's employing agency, as appropriate. Its final report must take into account any pertinent information submitted by the employing agency.

APPENDIX A TO PART 1221—CONGRESSIONAL SPACE MEDAL OF HONOR

OBVERSE

DESCRIPTION

A circular green enamel wreath of laurel surmounted by a five-pointed gold star (with vertical point downward) and issuing from between each point a gold flame, the star surmounted by a light blue enamel cloud bank with five lobes edged in gold bearing a five-pointed dark blue enamel star fimbriated gold and charged in center with a diamond; standing upon the wreath at top center a gold eagle with wings displayed.

SYMBOLISM

The laurel wreath, a symbol of great achievement, with the overlapping star points, simulates space vehicles moving to greater accomplishments through space. The flames signify the dynamic energy of the rocket era and the imagination of the men in the space program of the United States. The stylized glory cloud alludes to the glory in the coat of arms of the United States and to the high esteem of the award. The dark blue voided star symbolizes the vast mysteries of outer space while the brilliancy of the feat is represented by a diamond. The eagle with wings raised in the spirit of peace represents man's first landing on another planet.

REVERSE

DESCRIPTION

The reverse bears in center the inscription "CONGRESSIONAL" arranged in a semicircle above the inscription "SPACE MEDAL PRESENTED TO"; in base is space for the name of the recipient and the date all within an outer circle of fifty stars.

SUSPENSION RIBBON

DESCRIPTION

A ribbon $1\frac{3}{8}$ inches in width consisting of the following vertical stripes: gold $\frac{1}{16}$ inch, dark blue $\frac{1}{4}$ inch, light blue $\frac{9}{32}$ inch, white $\frac{1}{16}$ inch, red $\frac{1}{16}$ inch, white $\frac{1}{16}$ inch, light blue $\frac{9}{32}$ inch, dark blue $\frac{1}{4}$ inch, gold $\frac{1}{16}$ inch.

CABLE NOS. OF COLORS

Gold	65021 (old gold).
Dark Blue	70076 (independence blue).
Blue	65014 (light blue).
Red	65006 (scarlet).
White	65005.

SYMBOLISM

The scarlet center line on the white band symbolizes the courage of the astronauts in the nation's manned space program and the fire power of rockets that carry the crew through the earth's atmosphere (light blue); the light blue is the same color as the chief of the shield of the coat of arms of the United States which appears on the President's flag. The dark blue symbolizes the hostile environment of space, the gold edge representing success and accomplishment. Red, white and blue are also the national colors of the United States.

MINIATURE

DESCRIPTION

A one-half size replica of the medal and suspension ribbon approximately $2\frac{5}{16}$ inches in overall length.

LAPEL EMBLEM

DESCRIPTION

A miniature of the obverse of the medal, $\frac{9}{16}$ inch in diameter, all gold with a diamond in center.

ROSETTE

DESCRIPTION

One-half inch in diameter in the colors of the ribbon.

PART 1232—CARE AND USE OF ANIMALS IN THE CONDUCT OF NASA ACTIVITIES

Sec.
1232.100 Scope.
1232.101 Applicability.
1232.102 Policy.
1232.103 Definitions.
1232.104 Implementation procedures by non-NASA institutions.
1232.105 Implementation procedures by NASA field installations.
1232.106 Management authority and responsibility.
1232.107 Sanctions.

AUTHORITY: 42 U.S.C. Sec. 2451; Pub. L. 89-544, as amended; 7 U.S.C. Sec. 2131; 39 U.S.C. Sec. 3001; 9 CFR Subchapter A Parts 1, 2, 3, and 4; and Pub. L. 99-158, Sec. 495.

SOURCE: 54 FR 35870, Aug. 30, 1989, unless otherwise noted.

§ 1232.100 Scope.

This rule establishes the policy, implementation procedures, and management authority and responsibility for the care and use of vertebrate animals (hereinafter referred to as "animal subjects") in the conduct of NASA activities.

§ 1232.101 Applicability.

This rule applies to NASA Headquarters and NASA field installations and will be followed in all activities using animal subjects that are supported by NASA, conducted in NASA facilities, aircraft, or spacecraft, or which involve NASA to any degree. All activities using animal subjects conducted under a contract, grant, cooperative agreement, memorandum of understanding, or joint endeavor agreement entered into by NASA and another Government agency, private entity, non-Federal public entity, or foreign entity are included within the scope of this rule.

§ 1232.102 Policy.

(a) It is NASA policy to require its laboratories and the institutions performing NASA-supported activities using animal subjects to comply with the Animal Welfare Act of 1966 (Pub. L. 89-544), as amended (Pub. L. 91-579, Pub. L. 94-279, and Pub. L. 99-198), 7 U.S.C. 2131 et seq., and 39 U.S.C. 3001, and with the regulations promulgated thereunder by the Secretary of Agriculture (9 CFR Subchapter A Parts 1, 2, 3, and 4) pertaining to the care, handling, and treatment of animal subjects held or used for research, testing, teaching, or other activities supported by the Federal government. Investigators shall follow the guidelines described in the National Institutes of Health (NIH) Publication No. 85-23 (Rev. 1985), "Guide for the Care and Use of Laboratory Animals" (the Guide) or subsequent revisions. Attention is called to the U.S. Government "Principles for the Utilization and Care of Vertebrate Animals Used in Testing, Research, and Training" on pp. 81-83 of the Guide. In order to implement these guidelines and principles, investigators will comply with the revised Public Health Service (PHS) Policy on Humane Care and Use of Laboratory Animals (hereinafter referred to as PHS Policy) effective November 1, 1986.[1]

(b) This rule authorizes NASA to have the same authority for NASA-supported programs as that delegated to PHS by the PHS Policy, including the functions and responsibilities of the Animal Care and Use Committees (ACUC's).

(c) All research supported by NASA that involves activities using animal subjects shall be conducted under protocols that conform to this rule and that are reviewed and approved as prescribed in this rule.

§ 1232.103 Definitions.

The following definitions of terms comply with the PHS Policy and apply to the conduct of all NASA activities related to the care and use of animal subjects.

(a) *Activity* includes research, testing of hardware for animal use, flight experimentation, and any other tasks involving the use of animal subjects.

(b) *Animal* is any live vertebrate animal.

(c) *Animal Care and Use Committee* (ACUC) is the committee established at each institution and NASA field installation involved in research with animal subjects. It is responsible for evaluating the care and use of animal subjects at the facility and for ensuring that the care and use of animal subjects at the facility is in compliance with this rule and PHS Policy.

(d) *Authorized NASA Official* is the Director, Life Sciences Division, NASA Headquarters, or designee, who is the NASA Administrator's representative and is responsible for all NASA activities involving animal subjects. This individual is responsible for implementation of the provisions of this rule and for ensuring that agency programs involving animal subjects comply fully with all applicable laws, regulations, and guidelines.

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[1] Available from the Office of Protection from Research Risks (OPRR), National Institutes of Health, 9000 Rockville Pike, Bldg. 31, Room 5B59, Bethesda, MD 20892. Telephone 301-496-7005.

(e) *Field Installation Director* is the Director of a NASA Field Installation, or designee, who is the institutional official responsible for the care and use of animal subjects in research conducted at that field installation and for ensuring compliance with this rule at that field installation.

(f) *Investigator* is any person who uses or proposes to use live animal subjects in NASA-supported activities, e.g., receives funds, salaries, or support under a grant, award, agreement, contract, or direct employment by NASA, or the use of any NASA facilities, aircraft, or spacecraft for the purpose of carrying out research, tests, or experiments using animal subjects.

(g) *PHS Assurance* is a document prepared by an awardee institution assuring its compliance with PHS Policy.

(h) *Research of Flight Program Manager* is the NASA Headquarters manager of each program in which NASA has a manifest interest.

(i) *Supported* pertains to activities either funded in part or in whole by NASA or an approved activity that is not funded by NASA but that utilizes NASA facilities, including spacecraft and aircraft.

(j) *Veterinarian* is the NASA attending veterinarian, a person who has graduated from a veterinary school accredited by the American Veterinary Medical Association's Council on Education or has a certificate issued by the American Veterinary Medical Association's Education Commission for Foreign Veterinary Graduates, has received training and/or experience in the care and management of the species being attended, and who has direct or delegated authority and responsibility for activities involving animal subjects at the NASA field installation.

§ 1232.104 Implementation procedures by non-NASA institutions.

(a) Proposal Information. No animal subjects may be utilized unless a proposal justifying and describing their use is submitted to NASA for approval. The required proposal information is outlined in the PHS Policy (IV.D.1.a.-e.).

(b) Proposal Approval by the Institutional ACUC. Before a proposal for research involving the use of animal subjects will be considered for NASA support, the NASA Headquarters Research or Flight Program Manager must receive a statement that the research has been reviewed in accordance with the PHS Policy (IV.C.) and approved by the appropriate ACUC at the participating institution.

(c) Proposal Approval for Flight Experiments. In addition to the institution's ACUC review, activities involving animal subjects to be flown on NASA spacecraft will be subject to review and approval by the Ames Research Center (ARC) ACUC. The ARC ACUC will submit each evaluation report to the ARC Director who will transmit the report with his/her recommendation to the Authorized NASA Official, NASA Headquarters. Animal activities to be flown onboard NASA manned spacecraft may also be subject to review by the Human Research Policy and Procedures Committee (HRPPC) at the Johnson Space Center (JSC). Animal activities utilizing the facilities of any NASA field installation are also subject to approval of that field installation's ACUC (§ 1232.105(d)).

(d) Institutions with PHS Assurance on File. The institution, by an approved or provisionally acceptable Assurance on file at the NIH Office for Protection from Research Risks (OPRR), Department of Health and Human Services (HHS), assures NASA that it will comply with the PHS Policy. The Assurance file number must be included in the research proposal submitted to NASA.

(e) Institutions with no PHS Assurance on File. Proposals from institutions without an approved Assurance on file with the NIH OPRR will first be peer-reviewed for scientific merit. If the proposed research is deemed worthy of support, NASA will arrange for a special Assurance to be negotiated by the Director, Life Sciences Division, NASA Headquarters. The arrangements for a special Assurance review by NIH should be undertaken in consultation with the NASA representative to the Interagency Research

Animal Committee (IRAC) and will be handled on a case-by-case basis.

(f) Foreign institutions must comply with the PHS Policy (see Section II Of PHS Policy) and this rule before being supported by NASA for any activities involving animal subjects.

§ 1232.105 Implementation procedures by NASA field installations.

(a) *Proposal Information.* The information required for proposals involving the use of animal subjects is identical to that described in § 1232.104(a).

(b) *Proposal Approval by the NASA ACUC.* Before a proposal for research involving the use of animal subjects will be considered for NASA support, the NASA Headquarters Research or Flight Program Manager must receive a statement that the research has been reviewed in accordance with PHS Policy (IV.C.) and approved by the ACUC at the appropriate field installation.

(c) *Proposal Approval for Flight Experiments.* In addition to the Field Installation ACUC review, activities involving animal subjects to be flown on NASA spacecraft will be subject to review and approval by the ARC ACUC. The ARC ACUC will submit each evalaution report to the ARC Director who will transmit the report with his/her recommendation to the Authorized NASA Official, NASA Headquarters. Animal activities to be flown onboard NASA manned spacecraft may also be subject to review by the HRPPC at JSC.

(d) *Approval for Use of Field Installation Facilities.* The NASA Field Installation ACUC will review and approve or disapprove those parts of proposals that call for the use of their facilities to conduct any activity involving animal subjects (e.g., Kennedy Space Center or ARC Dryden facilities used to support experiments using animal subjects). The ACUC will submit each evaluation report to the Field Installation Director who will transmit the report with his/her recommendation to the Authorized NASA Official, NASA Headquarters.

(e) *NASA Animal Care and Use Committees.* (1) The Director of each NASA Field Installation that is involved in animal research activities will establish an ACUC to ensure compliance with the policies and provisions of this rule. The membership of the ACUC shall be in accordance with PHS Policy.

(2) The NASA Field Installation ACUC's will review and approve or disapprove all proposals using animal subjects. In accordance with the PHS Policy (IV.C.), the ACUC will submit each report to the Field Installation Director who will, upon request, transmit the report with his/her recommendation to the Authorized NASA Official, NASA Headquarters.

(3) NASA ACUC's have the authority to approve, disapprove, or require changes to be made in those components of proposals involving the care and use of animal subjects that are submitted by NASA investigators. All decisions shall be based on the response of a majority of a quorum of the members. A minority opinion including abstentions should be recorded; this record should include a justification for the opinion.

(4) The ACUC shall conduct continuing review of proposals at appropriate intervals as determined by the ACUC, but not less than once every 3 years.

(5) Proposals that have been approved by the ACUC may be subject to further appropriate review by the Authorized NASA Official, NASA Headquarters. However, the official may not approve those sections of a proposal related to the care and use of animal subjects if they have not been approved by the ACUC.

(6) Once experimental procedures are approved, no substantial changes can be made unless a formal request with appropriate justification for such a request is submitted to and approved by the appropriate ACUC. If the experiment involves exposure of the flight crew to the animal subjects, the HRPPC at JSC must review and approve the proposed modifications. Copies of ACUC approval of the proposed modifications shall be submitted to the Field Installation Director who will, upon request, transmit the report to the Authorized NASA Official, NASA Headquarters.

(7) Other functions of the field installation ACUC include:

(i) Reviewing at least once every 6 months the field installation's program for humane care and use of animals, using the Guide as a basis for evaluation;

(ii) Inspecting at least once every 6 months all of the field installation's animal facilities (including satellite facilities), using the Guide as a basis for evaluation;

(iii) Preparing reports of the ACUC evaluations conducted as required by § 1232.105 (e)(7)(i) and (ii), and submitting the reports to the Field Installation Director. (Note: the reports shall be updated at least once every 6 months upon completion of the required semiannual evaluations and shall be maintained by the field installation and made available to the Authorized NASA Official upon request. The reports must contain a description of the nature and extent of the field installation's adherence to the Guide and this rule and must identify specifically any departures from the provisions of the Guide and this rule, and must state the reasons for each departure. The reports must distinguish significant deficiencies from minor deficiencies. A significant deficiency is one which, consistent with PHS Policy, and, in the judgment of the ACUC and the Field Installation Director, is or may be a threat to the health or safety of the animals. If program or facility deficiencies are noted, the reports must contain a reasonable and specific plan and schedule for correcting each deficiency.)

(iv) Reviewing concerns involving the care and use of animals at the field installation;

(v) Making recommendations to the Field Installation Director regarding any aspect of the field installation's animal program, facilities, or personnel training.

(f) *NASA Assurances.* Each NASA field installation involved in activities using animal subjects must assure that its programs and facilities have been evaluated and accredited by the American Association for the Accreditation of Laboratory Animal Care (AAALAC). Written assurance of compliance with the provisions of the PHS Policy and this rule is also required from NASA field installations involved in animal activities before approval of any such activity. This Assurance should follow the sample PHS Assurance format shown on pages 19-26 of the PHS Policy and must be submitted by the Field Installation Director to the Authorized NASA Official. The Assurance is subject to renewal every 5 years.

(g) *Recordkeeping Requirements.* (1) Each NASA field installation involved in activities using animal subjects shall maintain:

(i) An Assurance of compliance with PHS Policy and this rule (§ 1232.105 (f));

(ii) Minutes of ACUC meetings, including records of attendance, activities of the committee, and committee deliberations;

(iii) Records of applications, proposals, and proposed significant changes in the care and use of animals and whether ACUC approval was given or withheld;

(iv) Records of semiannual ACUC reports and recommendations (including minority views) as forwarded to the Field Installation Director;

(v) Records of AAALAC accreditation; and

(vi) The Field Installation's Animal Users Guide and Animal Care Facility Management Manual. The Field Installation Animal Users Guide and Animal Care Facility Management Manual should be revised at appropriate intervals.

(2) All records shall be maintained for at least 3 years; records that relate directly to applications, proposals, and proposed significant changes in ongoing activities reviewed and approved by the ACUC shall be maintained for the duration of the activity and for an additional 3 years after completion of the activity. All records shall be furnished upon request to the Authorized NASA Official.

(h) *Reporting Requirements.* For each NASA field installation involved in activities using animal subjects:

(1) Statements of ACUC approval of research proposals, ACUC evaluation reports of flight experiment proposals and of experiment proposals utilizing field installation facilities, and the field installation's Assurance of compliance shall be submitted in the

manner prescribed in § 1232.104 (c) and § 1232.105 (b) (c) (d) and (f).

(2) At least once every 12 months, the ACUC, through the Field Installation Director, shall report in writing to the Authorized NASA Official:

(i) Any change in the field installation's program or facilities that would affect the AAALAC accreditation status;

(ii) Any change in the description of the field installation's program for animal care and use;

(iii) Any changes in the ACUC membership;

(iv) Notice of the dates that the ACUC conducted its semiannual evaluations of the field installation's program and facilities and submitted the evaluations to the Field Installation Director;

(v) A statement that the field installation has no changes to report as specified in § 1232.105 (h) (2) (i) (ii) or (iii) of this rule, if there are no changes.

(3) The ACUC, through the Field Installation Director, shall promptly provide the Authorized NASA Official with a full explanation of the circumstances and actions taken with respect to:

(i) Any serious or continuing noncompliance with this rule and PHS Policy;

(ii) Any serious deviation from the provisions of the Guide; or

(iii) Any suspension of an activity by the ACUC.

(4) Reports filed under § 1232.105 (h) of this rule shall include any minority views filed by members of the ACUC.

(5) A copy of the U.S. Department of Agriculture (USDA) Annual Report will be furnished to the Authorized NASA Official.

§ 1232.106 Management authority and responsibility.

(a) *Authorized NASA Official.* The Authorized NASA Official is the NASA Administrator's representative and is responsible for all NASA activities involving animal subjects. This individual is responsible for implementation of the provisions of this rule and for ensuring that agency programs involving animal subjects comply fully with all applicable laws, regulations, and guidelines.

(b) *Field Installation Director.* The Field Installation Director is responsible for and has the authority to:

(1) Sign the field installation's Assurance, making a commitment on behalf of the field installation that the requirements of the PHS Policy and this rule will be met in all field installation activities involving animal subjects;

(2) Create and oversee the functioning of the field installation ACUC;

(3) Decide and administer sanctions in cases of noncompliance with this rule;

(4) Fulfill the reporting requirements assigned to this individual in § 1232.105 (h); and

(5) Sign the annual USDA report.

(c) *NASA Field Installation(s) ACUC Responsibility.* Each NASA Field Installation ACUC is responsible to its Field Installation Director for the activities described in § 1232.104(c) and § 1232.105 (b) (c) (d) (e) and (h).

(d) *Research or Flight Program Manager Responsibility.* The Research or Flight Program Manager is responsible for ascertaining the presence of the required PHS Assurance file number for proposals involving animal subjects received from non-NASA institutions, and a statement of ACUC review and approval of all NASA and non-NASA proposals involving animal subjects. No awards for activities involving animal subjects can be made without this documentation [see § 1232.104 (b) and (d) and § 1232.105(b)].

(e) *NASA Veterinarian(s) Responsibility.* NASA veterinarian(s) have direct or delegated authority and responsibility for activities involving animal subjects at their field installation. Such authority and responsibilities shall include recommending approval or disapproval of procedures involving animal subjects as a member of the ACUC, continual monitoring of these activities, surveillance of the health and condition of animal subjects, and reporting any observed deviations from approved procedures involving animal subjects to the Field Installation Director and the ACUC. In the case of deviation from ACUC-approved practices or procedures, the veterinarian shall have the authority to immediately halt such procedures until they are reviewed and resolved by the ACUC. In cases of a conflict concerning animal usage by an investigator that cannot be resolved between him/her and the veterinarian, the matter may be brought to the attention of the Field Installation ACUC for review and recommendation for action as set forth in this rule. Whereas the performance of the veterinarian's duties can be delegated to other qualified individuals, the ultimate responsibility rests with the veterinarian. This responsibility extends not only to the Animal Care Facility (ACF), but also to other locations where animal subjects are used.

Other specific areas of responsibility and authority vested in the veterinarian are:

(1) *Entry of personnel into the ACF.* The veterinarian has the responsibility to develop access procedures to the ACF and submit them to the ACUC for approval.

(2) *Personnel Training.* The veterinarian will participate in the training of personnel in the handling of animal subjects and in specimen sampling procedures.

(3) *Animal Training.* The veterinarian will monitor all schedules and procedures involving the training and acclimation of animal subjects.

(4) *Surgery and Surgical Procedures.* The veterinarian will monitor all surgical procedures and verify that the principles of the Guide with regard to aseptic surgery are employed. Post-surgical recovery procedures are included. If necessary, training will be provided by the veterinarian to bring procedures conducted by investigators to the level of these standards.

(5) *Veterinary Medical and Engineering Procedures.* The veterinarian will monitor all veterinary medical and engineering procedures performed on animal subjects and verify their appropriateness. The veterinarian will actively participate in identifying and/or establishing the design requirements and adequacy of animal facilities for ground and spaceflight-related activities.

(f) *NASA Representative to the Interagency Research Animal Committee (IRAC).* The NASA representative to the IRAC will obtain information of all cases in which an institution's Assurance has been revoked by the PHS. The NASA IRAC representative will notify NASA ACUC's, Field Installation Directors, the Authorized NASA Official, and all Headquarters Research and Flight Program Managers so that they can determine which NASA awards involving the use of animal subjects are affected and can take appropriate sanctions.

§ 1232.107 Sanctions.

(a) *Non-NASA Institutions.* Principal investigators not employed by NASA whose activities are supported by NASA but whose activities using animal subjects are restricted to non-NASA facilities shall be subject to the control of their institution's ACUC and responsible institutional official. Notification of noncompliance with this rule shall be made either as described in § 1232.106(f) or by the non-NASA institution to the Director of the NASA Field Installation through which the activity has been supported and to the Authorized NASA Official. Any continued noncompliance may be caused for termination of funding or support.

(b) *NASA Field Installations.* (1) Inappropriate procedures on animal subjects by NASA principal investigators shall be halted by the NASA Field Installation Veterinarian or line management and brought to the attention of the ACUC if the issue cannot be immediately resolved. The ACUC will review the activity and report any noncompliance with this rule to the Field Installation Director. Principal investigators not employed by NASA, whose activities using animal subjects are performed in NASA facilities, aircraft, or spacecraft, are subject to similar action. Such noncompliance will be cause for sanctions. The principal investigator can contest, in writing, these decisions to the ACUC.

(2) The ACUC as the agent of the Field Installation Director may suspend an activity that it previously approved if it determines that the activi-

ty is not being conducted in accordance with applicable provisions of the Animal Welfare Act, the Guide, PHS Policy requirements, or this rule.

(3) Any suspension or termination of approval will include a statement of the reasons for the action and will be promptly reported to the principal investigator and the appropriate Field Installation Director. In the case of investigators from non-NASA institutions, notification should be sent to the investigator, the appropriate institution, and the Director of the Field Installation through which the activity has been supported. If the ACUC suspends an activity involving animal subjects, the Field Installation Director in consultation with the ACUC shall review the reasons for suspension, take appropriate corrective action, and report that action with a full explanation to the Authorized NASA Official, NASA Headquarters. If an ACUC recommends disapproval suspension, termination, or conditional approval of an activity, the principal investigator will be given the opportunity to ask for reconsideration of the decision in person and/or in writing to the appropriate NASA ACUC.

(4) If, after notification of the Field Installation Director and an opportunity for correction, such deficiencies or deviations remain uncorrected, the ACUC will notify (in writing) the Authorized NASA Official, NASA Headquarters, who is then responsible for all corrective action to be taken.

PART 1240—INVENTIONS AND CONTRIBUTIONS

Subpart 1—Awards for Scientific and Technical Contributions

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Authority: Sec. 306 of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2458), and the Federal Technology Transfer Act of 1986, Sec. 12, 15 U.S.C. 3710b(1).

Source: 55 FR 614, Jan. 8, 1990, unless otherwise noted.

Subpart 1—Awards for Scientific and Technical Contributions

§ 1240.100 Purpose.

This subpart prescribes procedures for submitting applications for monetary awards to the Administrator of NASA for scientific and technical contributions which have significant value in the conduct of aeronautical and space activities pursuant to 42 U.S.C. 2458, and establishes the awards program consistent with the Federal Technology Transfer Act of 1986, Section 12, 15 U.S.C. 3710b(1).

§ 1240.101 Scope.

This subpart applies to any scientific or technical contribution, whether or not patentable, which is determined by the Administrator after referral to the Inventions and Contributions Board to have significant value in the conduct of aeronautical and space activities for which an application for award has been submitted to NASA under 42 U.S.C. 2458.

§ 1240.102 Criteria.

(a) Only those contributions to NASA which have been (1) used in a NASA program or adopted or sponsored or supported by NASA, and (2) found to have significant value in the conduct of aeronautical and space activities will be recommended for award under this subpart.

(b) In determining the amount, terms, and conditions of any award, the following criteria will be considered:

(1) The value of the contribution to the United States;

(2) The aggregate amount of any sums which have been expended by the applicant for the development of such contribution;

(3) The amount of any compensation (other than salary received for services rendered as an officer or employee of the Government) previously received by the applicant for or on account of the use of such contributions by the United States; and

(4) Such other factors as the Administrator shall determine to be material.

§ 1240.103 Applications for awards.

(a) *Eligibility.* Applications for award may be submitted by any person including any individual, partnership, corporation, association, institution, or other entity.

(b) *Information required.* Applications for award should be addressed to the Inventions and Contributions Board (herein referred to as the Board), National Aeronautics and Space Administration, Washington, DC 20546, and will contain:

(1) The name and address of the applicant, the person's relationship to the contributor if the contribution is made by one other than the applicant, and the names and addresses of any others having information as to the value or usage of the contribution;

(2) A complete written description of the contribution, in the English language, accompanied by drawings, sketches, diagrams, or photographs illustrating the nature of the contribution and the technical and scientific principles upon which it is based, any available test or performance data or observations of pertinent scientific phenomena, and the aeronautics or space application of the contribution;

(3) The date and manner of any previous submittal of the contribution to any other United States Government agency, and the name of such agency;

(4) The aggregate amount of any sums which have been expended by the applicant for the development of the contribution;

(5) The nature and extent of any known use of the contribution by the United States and by any agency of the United States Government;

(6) The amount of any compensation (other than salary received for services rendered as an officer or employee of the Government) previously received by the applicant for or on account of the use of such contribution by the United States;

(7) Identification of any United States and foreign patents applied for or issued relating to the contribution; and

(8) An agreement to surrender all claims which such applicant may have for the use of such contribution by the Government.

(c) *General.* (1) Each contribution will be made the subject of a separate application in order that each contribution may be evaluated individually.

(2) Material constituting a possible hazard to safety or requiring unusual storage facilities should not be submitted, and will not be accepted. Models or intricate exhibits demonstrating the contribution will not be accepted unless specifically requested by the Board. In those few cases where such models or exhibits have been submitted pursuant to a request made by the Board, the same will be returned to the applicant upon written request from the applicant.

(3) It is the policy of the Board to use or disclose information contained in applications for awards for evaluation purposes only. Applications for awards submitted with restrictive legends or statements differing from this policy will be treated in accordance with the Board's policy.

§ 1240.104 Special procedures—NASA and NASA contractor employees.

(a) A NASA Headquarters office, a NASA field installation, or a NASA contractor may submit to the Board an application for an award identifying the originator(s) of any scientific or technical contribution conceived or developed during the performance of a NASA program or contract, and which is considered to be of value in advancing the state of knowledge in space or aeronautical activities, whether or not the contribution is the subject of a NASA Tech Brief or of a U.S. patent application.

(b) When the Board receives written notice (NASA Form 1548) that the Associate General Counsel for Intellectual Property at NASA Headquarters or the cognizant Patent Counsel at a NASA field installation has authorized the filing of a U.S. patent application for an invention made and reported by an employee of NASA or an employee of a NASA contractor, the Board will recommend to the Administrator or a designee that an initial award of at least $500 be granted to a sole inventor, and an award in the amount of at least $250 will normally be granted to each of joint inventors. The Board is authorized to recommend a supplemental monetary award in an amount that will be based on the evaluation of the technical and commercial merits of the invention.

(c) When the Board receives written notice (NASA Form 1546) that the Technology Utilization Officer at a NASA field installation has approved for publication a selected NASA Tech Brief based on an innovation made and reported by an employee of NASA or a NASA contractor, the Board will recommend to the Administrator or designee that an initial award of at least $150 be granted, and an award in at least that amount will be granted to each originator of the innovation. The Board is authorized to recommend a supplemental monetary award in an amount that will be based on the evaluation of the technical and commercial merits of the innovation.

(d) When a selected NASA Tech Brief has been approved for publication and the filing of a U.S. patent application has been authorized for the same contribution, the initial awards authorized in paragraphs (b) and (c) of this section will be cumulative.

(e) Awards authorized in paragraphs (a), (b), and (c) of this section will not be granted to a contributor who has previously received full compensation for, or on account of, the use of such a contribution by the United States.

(f) If a contribution, as first reported and evaluated, is judged not to merit a supplemental award, as provided for in paragraphs (a), (b), or (c) of this section, and the contribution is later proved to be of significant value, it may be submitted for reevaluation. Responsible NASA and NASA contractor officials are encouraged to periodically review such reported contributions, and to resubmit them for reconsideration through the same channels as originally reported.

§ 1240.105 Review and evaluation of contribution.

(a) A contribution will be initially reviewed by the Board on the basis of the material submitted by the applicant under § 1240.103(b).

(b) If it is determined that the contribution has been used in a NASA program, or adopted or sponsored or supported by NASA, the contribution will be evaluated for its significant value in the conduct of aeronautical or space activity.

(c) The Board will recommend an award for such contribution when, upon evaluation of its scientific and technical merits, it is determined to warrant an award of at least $250.

§ 1240.106 Notification by the Board.

(a) With respect to each completed application where the Board has recommended to the Administrator the granting of an award, and the Administrator has approved such award, the Board will notify the applicant of the amount and terms of the award. In the case of NASA employees or employees of NASA contractors, such notification will normally be made through the appropriate NASA field installation representative.

(b) Except for applications from NASA employees or employees of NASA contractors, where the Board does not propose to recommend to the Administrator the granting of an award, a notification will be provided which includes a brief statement of the reasons for such decision.

§ 1240.107 Reconsideration.

(a) In those cases where the Board does not recommend an award, the applicant may, within such period as the Board may set but in no event less than 30 days from notification, request reconsideration of the Board's decision.

(b) If reconsideration has been requested within the prescribed time, the applicant will, within 30 days from the date of the request for reconsideration, or within any other time as the

Board may set, file its statement setting forth the issues, points, authorities, arguments, and any additional material on which it relies.

(c) Upon filing of the reconsideration statement by the applicant, the case will be assigned for reconsideration by the Board upon the contents of the application, the record, and the reconsideration statement submitted by the applicant.

(d) If after reconsideration, the Board again does not propose to recommend the granting of an award, the applicant, after such notification by the Board, may request an oral hearing within the time set by the Board.

(e) An oral hearing without reconsideration may be granted upon determination of the Chairperson that good cause exists to do so.

§ 1240.108 Hearing procedure.

(a) Oral hearing held by the Board will be in accordance with the following procedures:

(1) If the applicant requests a hearing within the time set in accordance with § 1240.107 (d) or (e), the Board will set a place and date for such hearing and notify the applicant.

(2) The applicant may be represented by an attorney or any other appropriately designated person.

(3) Hearings will be open to the public unless the applicant requests that a closed hearing be held.

(4) Hearings may be held before the full membership of the Board or before any panel of Board members designated by the Chairperson.

(5) Hearings will be conducted in an informal manner with the objective of providing the applicant with a full opportunity to present evidence and arguments in support of the application. Evidence may be presented through means of such witnesses, exhibits, and visual aids as are arranged for by the applicant. While proceedings will be ex parte, members of the Board and its counsel may address questions to witnesses called by the applicant, and the Board may, at its option, utilize the assistance and testimony of technical advisors or other experts.

(6) Subject to the provisions of § 1240.103(c)(2), the applicant will submit a copy of any exhibit or visual aid utilized unless otherwise directed by the Board. The Board may, at its discretion, arrange for a written transcript of the proceedings and a copy of such transcript will be made available by the recorder for purchase by the applicant.

(7) No funds are available to defray traveling expenses or any other cost incurred by the applicant.

§ 1240.109 Recommendation to the Administrator.

Upon a determination by the Board that a contribution merits an award, the Board will recommend to the Administrator or a designee the terms and conditions of the proposed award, including a specific amount and distribution thereof for any multiple contributors. The recommendation of the Board to the Administrator or designee will reflect the views of the majority of the Board members. Dissenting views may be transmitted with the majority opinion.

§ 1240.110 Release.

Under subsection 306(b)(1) of the National Aeronautics and Space Act of 1958, as amended, no award will be made to an applicant unless the applicant submits a duly executed release, in a form specified by the Administrator, of all claims the applicant may have to receive any compensation (other than the award recommended) from the United States Government for use of the contribution or any element thereof at any time by or on behalf of the United States, or by or on behalf of any foreign government pursuant to any existing or future treaty or agreement with the United States, within the United States, or at any other place.

§ 1240.111 Presentation of awards.

(a) Monetary awards and accompanying written acknowledgments to employees of NASA will be presented in a formal ceremony by the appropriate Official-in-Charge at the Headquarters Office, or by the Director of the cognizant field installation or designee.

(b) Monetary awards and accompanying written acknowledgments to employees of NASA contractors will be forwarded to contractor officials for suitable presentation.

§ 1240.112 Financial accounting.

(a) An Award Check Receipt (NHQ DIV Form 622), which accompanies the transmittal of each group of award checks from the Board will be dated and signed by the responsible Award Liaison Officer/Technology Utilization Officer and returned to the Board without delay.

(b) Not later than December 10 of each year, the responsible field installation official will submit a report certifying that all award checks, which were issued and received by the field installation during the year, have been delivered to the proper employees of NASA and employees of NASA contractors. In the case of those checks that have not been delivered by December 10, the certification report will be accompanied by all undelivered checks and a brief explanation of the reasons for the failure to make delivery. This annual certification report is essential in order to assure that income and withholding tax totals for all awardees are correct and complete at the close of each calendar year.

§ 1240.113 Delegation of authority.

(a) The Associate Administrator for Management and the Chairperson, Inventions and Contributions Board, are delegated authority to execute grants of awards for significant scientific or technical contributions not exceeding $1000 per contributor, when in accordance with the recommendation of the Board and in conformity with applicable law and regulations.

(b) The Chairperson, Inventions and Contributions Board, is delegated authority to execute grants of initial awards upon the decision to file for a U.S. patent application, and upon approval to publish a selected NASA Tech Brief.

(c) No redelegation is authorized except by virtue of succession.

(d) The Chairperson, Inventions and Contributions Board, will ensure that feedback is provided so that the Administrator, through official channels, is currently informed of significant actions, problems, or other matters of substance related to the exercise of the authority delegated in this section.

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Subpart 1241.1—General Procedures

AUTHORITY: 42 U.S.C. 2473(b)(1).

SOURCE: 42 FR 42679, Aug. 24, 1977, unless otherwise noted.

§ 1241.10 Scope.

This subpart prescribed the procedures for the adjudication of appeals before the NASA Board of Contract Appeals (hereinafter referred to as "the Board") arising from NASA contracts.

PREFACE TO THE RULES

§ 1241.11 Authority and jurisdiction of the Board.

(a) The Board, constituted under the provisions of Subpart 1209.1 of this chapter, is authorized to hear, consider and determine appeals from decisions of contracting officers arising under contracts which contain provisions requiring the determination of appeals by the Administrator or his duly authorized representative or board. In addition, the Board may perform other quasi-judicial duties as assigned by the Administrator. The Board has authority to determine appeals falling within the scope of its jurisdiction as fully and finally as might the Administrator.

(b) Under § 1209.102(b) of this chapter, the Board is granted the authority to issue its rules of procedure.

§ 1241.12 Location and organization of the Board.

(a) The Board is located in Washington, D.C., and its mailing address is The Board of Contract Appeals, National Aeronautics and Space Administration, Washington, D.C. 20546.

(b) The Board consists of a Chairman and two other members, all of whom shall be attorneys at law duly licensed by any state or the District of Columbia, and who have significant experience in Government procurement law. In general, the appeals are assigned to a panel of at least two members of the Board. If a panel of two members is unable to agree upon a decision, the Chairman may assign a third member to consider the appeal. The Chairman is designated as Chief Administrative Judge and the other Board members are designated as Administrative Judges.

§ 1241.13 Decisions on questions of law.

When an appeal is taken pursuant to a Disputes clause in a contract which limits appeals to disputes concerning questions of fact, the Board may, in its discretion, hear, consider, and decide all questions of law necessary for the complete adjudication of the issue. In the consideration of an appeal should it appear that a claim is involved which is not cognizable under the terms of the contract, the Board may make findings of fact with respect to such a claim without expressing an opinion on the question of liability.

§ 1241.14 Board of Contract Appeals procedure.

(a) *Rules.* Appeals referred to the Board are handled in accordance with the rules of the Board.

(b) *Administration and interpretation of rules.* Emphasis is placed upon the sound administration of these rules in specific cases, because it is impracticable to articulate a rule to fit every possible circumstance which may be encountered. These rules will be interpreted so as to secure a just and inexpensive determination of appeals without unnecessary delay.

(c) *Preliminary procedures.* Preliminary procedures are available to encourage full disclosure of relevant and material facts, and to discourage unwarranted surprise.

(d) *Time, computation, and extensions.* (1) All time limitations specified for various procedural actions are computed as maximums, and are not to be fully exhausted if the action described can be accomplished in a lesser period. These time limitations are similarly eligible for extension in appropriate circumstances, on good cause shown.

(2) Except as otherwise provided by law, in computing any period of time prescribed by these rules or by any order of the Board, the day of the event from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, Sunday, or a legal holiday, in which event the period shall run to the end of the next business day.

(3) Requests for extensions of time from either party shall be mde in writing and stating good cause therefor.

PRELIMINARY PROCEDURES

§ 1241.101 Appeals, how taken.

Notice of an appeal must be in writing and the original, together with two copies, may be filed with the contracting officer from whose decision the appeal is taken. The notice of appeal must be mailed or otherwise filed within the time specified therefor in the contract or allowed by applicable provision of directive or law.

§ 1241.102 Notice of appeal, contents of.

A notice of appeal should indicate that an appeal is thereby intended and should identify the contract (by number), and the final decision of the contracting officer from which the appeal is taken. The notice of appeal should be signed personally by the appellant (the contractor making the apppeal), or by an officer of the appellant corporation or member of the appellant firm, or by the contractor's duly authorized representative or attorney. The complaint referred to in § 1241.106 may be filed with the notice of appeal, or the appellant may designate the notice of appeal as a complaint, if it otherwise fulfills the requirements of a complaint.

§ 1241.103 Forwarding of appeals.

When a notice of appeal in any form has been received by the contracting officer, he shall endorse thereon the date of mailing (or date of receipt, if otherwise conveyed) and within 10 days shall forward said notice of appeal to the Board. Following receipt by the Board of the original notice of an appeal (whether through the contracting officer or otherwise), the contractor and contracting officer will be promptly advised of its receipt and the contractor will be furnished a copy of these rules.

§ 1241.104 Preparation, contents, organization, forwarding and status of appeal file.

(a) *Duties of Contracting Officer.* Within 30 days of receipt of an appeal, or advice that an appeal has been filed, the contracting officer shall assemble and transmit to the Board an appeal file consisting of all documents pertinent to the appeal, including:

(1) The decision and findings of fact from which appeal is taken;

(2) The contract including specifications and pertinent amendments, plans and drawings;

(3) All correspondence between the parties pertinent to the appeal, including the letter or letters of claim in response to which decision was issued;

(4) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and

(5) Any additional information considered pertinent.

Within the same time specified above, the contracting officer shall furnish the appellent a copy of each document he transmits to the Board, except those stated in § 1241.104(a)(2), as to which a list furnished appellant indicating specific contractual documents transmitted will suffice, and those stated in § 1241.104(d).

(b) *Duties of the appellant.* Within 30 days after receipt of a copy of the appeal file assembled by the contracting officer, the appellant shall supplement the same by transmitting to the Board any documents not contained therein which he considers pertinent to the appeal, and furnishing two copies of such documents to the Government trial attorney.

(c) *Organization of the appeal file.* Documents in the appeal file may be originals or legible fascimile or authenticated copies thereof, and shall be arranged in chronological order where practicable, numbered sequentially, tabbed and indexed to identify the contents of the file.

(d) *Lengthy documents.* The Board may waive the requirement of furnishing to the other party copies of bulky, lengthy, or out-of-size documents in the appeal file when a party has shown that doing so would impose an undue burden. At the time a party files with the Board a document as to which such a waiver has been granted, he shall notify the other party that the same or a copy is available for inspection at the offices of the Board or of the party filing same.

(e) *Status of documents in appeal file.* Documents contained in the appeal file are considered, without further action by the parties, as part of the record upon which the Board will render its decision, unless a party objects to the consideration of a particular document in advance of hearing or of settling the record in the event there is no hearing on the appeal. If objection to a document is made, the Board will rule upon its admissibility into the record as evidence in accordance with §§ 1241.113 and 1241.120.

§ 1241.105 Dismissal for lack of jurisdiction.

Any motion addressed to the jurisdiction of the Board shall be promptly filed. Hearing on the motion shall be afforded on application of either party, unless the Board determines that its decision on the motion will be deferred pending hearing on both the merits and the motion. The Board shall have the right at any time and on its own motion to raise the issue of its jurisdiction to proceed with a particular case, and shall do so by an appropriate order, affording the parties an opportunity to be heard thereon.

§ 1241.106 Pleadings.

(a) *Appellant.* Within 30 days after receipt of notice of docketing of the appeal, the appellant shall file with the Board an original and two copies of a complaint setting forth simple, concise and direct statements of each of his claims, alleging the basis, with appropriate reference to contract provisions, for each claim, and the dollar amount claimed. This pleading shall fulfill the generally recognized requirements of a complaint, although no particular form or formality is required. Upon receipt thereof, the Board shall serve a copy upon the respondent. Should the complaint not be received within 30 days, appellant's claim and appeal may, if in the opinion of the Board the issues before the Board are sufficiently defined, be deemed to set forth his complaint and the respondent shall be so notified.

(b) *Respondent.* Within 30 days from receipt of said complaint, or the aforesaid notice from the Board, respondent shall prepare and file with the Board an original and two copies of an answer thereto, setting forth simple, concise, and direct statements of respondent's defenses to each claim asserted by appellant. This pleading shall fulfill the generally recognized requirements of an answer, and shall set forth any affirmative defenses or counter-claims as appropriate. Upon receipt thereof, the Board shall serve a copy upon appellant. Should the answer not be received within 30 days, the Board may, in its discretion, enter a general denial on behalf of the Government, and the appellant shall be so notified.

§ 1241.107 Amendments of pleadings or record.

The Board upon its own initiative or upon application by a party may, in its discretion, order a party to make a more definite statement of the complaint or answer, or to reply to an answer. The Board may, in its discretion, and within the proper scope of the appeal, permit either party to amend his pleading upon conditions just to both parties. When issues within the proper scope of the appeal, but not raised by the pleadings or the documentation described in § 1241.104, are tried by express or implied consent of the parties, or by permission of the Board, they shall be treated in all respects as if they had been raised therein. In such instances, motions to amend the pleadings to conform to the proof may be entered, but are not required. If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings or the § 1241.104 documentation (which shall be deemed part of the pleadings for this purpose), it may be admitted within the proper scope of the appeal, provided, however, that the objecting party may be granted a continuance if necessary to enable him to meet such evidence.

§ 1241.108 Hearing election.

Upon receipt of respondent's answer or the notice referred to in the last sentence of § 1241.106(b), appellant shall advise whether he desires a hearing as prescribed in §§ 1241.117 through 1241.125, or whether, in the alternative, he elects to submit his case on the record without a hearing, as prescribed in § 1241.111. In appropriate cases, the appellant shall also elect whether he desires the optional accelerated procedure prescribed in § 1241.112.

§ 1241.109 Prehearing briefs.

Based on an examination of the documentation described in § 1241.104, the pleadings, and a determination of whether the arguments and authorities addressed to the issues are adequately set forth therein, the Board may, in its discretion, require the parties to submit prehearing briefs in any case in which a hearing has been elected pursuant to § 1241.108. In the absence of a Board requirement therefor, either party may, in its discretion and upon appropriate and sufficient notice to the other party, furnish a prehearing brief to the Board. In any case where a prehearing brief is submitted, it shall be furnished so as to be received by the Board at least 15 days prior to the date set for hearing, and a copy shall simultaneously be furnished to the other party as previously arranged.

§ 1241.110 Prehearing or presubmission conference.

(a) Whether the case is to be submitted pursuant to § 1241.111, or heard pursuant to § 1241.117 through § 1241.125, the Board may upon its own initiative or upon the application of either party, call upon the parties to appear before an Administrative Judge for a conference to consider:

(1) The simplification or clarification of the issues;

(2) The possibility of obtaining stipulations, admissions, agreements on documents, understandings on matters already of record, or similar agreements which will avoid unnecessary proof;

(3) The limitation of the number of expert witnesses, or avoidance of similar cumulative evidence, if the case is to be heard;

(4) The possibility of agreement disposing of all or any of the issues in dispute; and

(5) Such other matters as may aid in the disposition of the appeal.

(b) *Conference record.* The results of the conference shall be reduced to writing by the Board member within 5 calendar days after the close of the conference. Copies shall be duly served on the parties who may, within 10 calendar days from receipt of the written record, file objection, comment, request for correction, or other motion pertaining to that record of prehearing conference. The record of prehearing conference, together with any objection, comment, request for correction, or other motion made by the parties shall become a part of the Board record.

§ 1241.111 Submission without a hearing.

Either party may elect to waive a hearing and to submit his case upon the record before the board, as settled pursuant to § 1241.113. Submission of a case without hearing does not relieve the parties from the necessity of proving the facts supporting their allegations or defenses. Affidavits, depositions, admissions, answers to interrogatories, and stipulations may be employed to supplement other documentary evidence in the Board record. The Board may permit such submission to be supplemented by oral argument (transcribed if requested), and by briefs arranged in accordance with § 1241.123.

§ 1241.112 Optional accelerated procedure.

(a) In appeals involving $25,000 or less, either party may elect, in his notice of appeal, complaint, answer, or by separate correspondence or statement prior to commencement of hearing or settlement of the record, to have the appeal processed under a shortened and accelerated procedure. For application of this rule the amount in controversy will be determined by the sum of the amounts claimed by either party against the other in the appeal proceeding. If no specific amount of claim is stated, a case will be considered to fall within this rule if the sum of the amounts which each party represents in writing that it could recover as a result of a Board decision favorable to it does not exceed $25,000. Upon such election, a case shall then be processed under this rule unless the other party objects and shows good cause why the substantive nature of the dispute requires processing under the Board's regular procedures and the Board sustains such objection. In cases proceeding under this rule, parties are encouraged, to the extent possible consistent with adequate presentation of their factual and legal positions, to waive pleadings, discovery, and briefs.

(b) Written decision by the Board in cases proceeding under this rule normally will be short and contain summary findings of fact and conclusions only. The Board will endeavor to render such decisions within 30 days after the appeal is ready for decision.

(c) Except as herein modified, these rules otherwise apply in all respects.

§ 1241.113 Settling the record.

(a) The record upon which the Board's decision will be rendered consists of the appeal file described in

§ 1241.104 and, to the extent the following items have been filed, pleadings, prehearing conference memoranda or orders, prehearing briefs, depositions or interrogatories received in evidence, admissions, stipulations, transcripts of conferences and hearings, hearing exhibits, posthearing briefs, and documents which the Board has specifically designated be made a part of the record. The record will at all reasonable times be available for inspection by the parties at the office of the Board.

(b) Except as the Board may otherwise order in its discretion, no proof shall be received in evidence after completion of an oral hearing or, in cases submitted on the record, after notification by the Board that the case is ready for decision.

(c) The weight to be attached to any evidence of record will rest within the sound discretion of the Board. The Board may in any case require either party, with appropriate notice to the other party, to submit addditional evidence on any matter relevant to the appeal.

§ 1241.114 Discovery—depositions.

(a) *General policy and protective orders.* The parties are encouraged to engage in voluntary discovery procedures. In connection with any deposition or other discovery procedure, the Board may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, and those orders may include limitations on the scope, method, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents.

(b) *When depositions permitted.* After an appeal has been docketed and complaint filed, the parties may mutually agree to, or the Board may, upon application of either party and for good cause shown, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purpose of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence.

(c) *Orders on depositions.* The time, place, and manner of taking depositions shall be as mutually agreed by the parties, or failing such agreement, governed by order of the Board.

(d) *Use as evidence.* No testimony taken by depositions shall be considered as part of the evidence in the hearing of an appeal unless and until such testimony is offered and received in evidence at such hearing. It will not ordinarily be received in evidence if the deponent is present and can testify personally at the hearing. In such instances, however, the deposition may be used to contradict or impeach the testimony of the witness given at the hearing. In cases submitted on the record, the Board may, in its discretion, receive depositions as evidence in supplementation of that record.

(e) *Expenses.* Each party shall bear its own expenses associated with the taking of any deposition.

§ 1241.115 Interrogatories to parties, admission of facts, and production and inspection of documents.

(a) *Interrogatories to parties.* After an appeal has been filed with the Board, a party may serve on the other party written interrogatories to be answered separately in writing, signed under oath and returned within 30 days. Upon timely objection by the party, the Board will determine the extent to which the interrogatories will be permitted.

(b) *Admission of facts.* After an appeal has been filed with the Board, a party may serve upon the other party a request for the admission of specified facts. Within 30 days after service, the party served shall answer each requested fact or file objections thereto. The factual propositions set out in the request shall be deemed admitted upon the failure of a party to respond to the request for admission.

(c) *Production and inspection of documents.* Upon motion of any party showing good cause therefor, and upon notice, the Board may order the other party to produce and permit the inspection and copying or photographing of any designated documents or objects, not privileged, specifically identified, and their relevance and materiality to the cause or causes in issue explained, which are reasonably calculated to lead to the discovery of admissible evidence. If the parties cannot themselves agree thereon, the Board shall specify just terms and conditions in making the inspection and taking the copies and photographs.

§ 1241.116 Service of papers.

Papers shall be served personally or by mailing the same, addressed to the party upon whom service is to be made. Copies of complaints, answers, and simultaneous briefs shall be filed directly with the Board. The party filing any other paper with the Board shall send a copy thereof to the opposing party, noting on the paper filed with the Board, or on the letter transmitting the same, that a copy has been so furnished.

HEARINGS

§ 1241.117 Where and when held.

Hearings will ordinarily be held in the Washington, D.C., area, except that upon request seasonably made and upon good cause shown, the Board may set the hearing at another location. Hearings will be scheduled at the discretion of the Board with due consideration to the regular order of appeals and other pertinent factors. On request or motion by either party and upon good cause shown, the Board may, in its discretion, advance a hearing.

§ 1241.118 Notice of hearings.

The parties shall be given at least 15 days notice of the time and place set for hearings. In scheduling hearings, the Board will give due regard to the desires of the parties and to the requirement for just and inexpensive determination of appeals without unnecessary delay. Notices of hearing shall be promptly acknowledged by the parties.

§ 1241.119 Unexcused absence of a party.

The unexcused absence of a party at the time and place set for hearing will not be occasion for delay. In the event of such absence, the hearing will proceed and the case will be regarded as submitted by the absent party as provided in § 1241.111.

§ 1241.120 Nature of hearings.

Hearings shall be as informal as may be reasonable and appropriate under the circumstances. Appellant and respondent may offer at a hearing on the merits such relevant evidence as they deem appropriate and as would be admissible under the generally accepted rules of evidence applied in the courts of the United States in nonjury trials, subject, however, to the sound discretion of the presiding member in supervising the extent and manner of presentation of such evidence. In general, admissibility will hinge on relevancy and materiality. Letters or copies thereof, affidavits, or other evidence not ordinarily admissible under the generally accepted rules of evidence, may be admitted in the discretion of the presiding member. The weight to be attached to evidence presented in any particular form will be within the discretion of the Board, taking into consideration all the circumstances of the particular case. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The Board may in amy case require evidence in addition to that offered by the parties.

§ 1241.121 Examination of witnesses.

Witnesses before the Board will be examined orally under oath or affirmation, unless the facts are stipulated, or the Board member shall otherwise order. If the testimony of a witness is not given under oath of affirmation, the Board shall warn the witness that his statements may be subject to the provisions of 18 U.S.C. 287 and 1001, and any other provisions of law imposing penalties for knowingly making false representations in connection with claims against the United States or in any matter within the jurisdiction of any department or agency thereof.

§ 1241.122 Copies of papers.

When books, records, papers, or documents have been received in evidence, a true copy thereof or of such part thereof as may be material or relevant may be substituted therefor, during the hearing or at the conclusion thereof.

§ 1241.123 Posthearing briefs.

Posthearing briefs may be submitted upon such terms as may be agreed upon by the parties and the presiding member at the conclusion of the hearing. Ordinarily, they will be simultaneous briefs, exchanged within 30 days after receipt of transcript.

§ 1241.124 Transcript of proceedings.

Testimony and argument at hearings shall be reported verbatim, unless the Board otherwise orders. Transcripts or copies of the proceedings shall be supplied to the parties at such rates as may be fixed by contract with the reporter.

§ 1241.125 Withdrawal of exhibits.

After a decision has become final the Board may, upon request, and after notice to the other party, in its discretion, permit the withdrawal of original exhibits, or any part thereof, by the party entitled thereto. The subtitution of true copies of exhibits or any part thereof may be required by the board on its discretion as a condition of granting permission for such withdrawal.

Representation

§ 1241.126 The appellant.

An individual appellant may appear before the Board in person, a corporation by an officer thereof, a partnership or joint venture by a member thereof, or any of these by an attorney at law duly licensed in any state, commonwealth, territory, or in the District of Columbia. An attorney representing an appellant shall file a written notice of appearance with the Board.

§ 1241.127 The respondent.

Government counsel may, in accordance with their authority, represent the interest of the Government before the Board. They shall file notices of appearance with the Board, and notice thereof will be given appellant or his attorney in the form specified by the Board from time to time. Whenever at any time it appears that appellant and the government counsel are in agreement as to disposition of the controversy, the Board may suspend further processing of the apppeal: *Provided, however,* That if the Board is advised thereafter by either party that the controversy has not been disposed of by agreement, the case shall be restored to the Board's calendar without loss of position.

Decisions

§ 1241.128 Decisions.

Decisions of the Board will be made in writing and copies thereof will be forwarded simultaneously to both parties. Decisions of the Board will be made solely upon the record, as described in § 1241.113. The rules of the Board, all final orders and decisions, and other records of, or before, the Board shall be available for inspection at its offices to the extent permitted by, and subject to the exemptions of, 5 U.S.C. 552.

Motion for Reconsideration

§ 1241.129 Motion for reconsideration.

A motion for reconsideration, if filed by either party, shall set forth specifically the ground or grounds relied upon to sustain the motion, and shall be filed within 30 days from the date of the receipt of a copy of the decision of the Board by the party filing the motion.

Dismissals

§ 1241.130 Dismissal without prejudice.

In certain cases, appeals docketed before the Board are required to be placed in a suspense status and the Board is unable to proceed with disposition thereof for reasons not within the control of the Board. In any such case where the suspension has continued, or it appears that it will continue for an inordinate length of time, the Board may, in its discretion, dismiss such appeals from its docket without prejudice to their restoration when the cause of suspension has been removed. Unless either party or the Board acts within three years to reinstate any appeal dismissed without prejudice, the dismissal shall be deemed with prejudice.

§ 1241.131 Dismissal for failure to prosecute.

Whenever a record discloses the failure of either party to file documents required by these rules, respond to notices or correspondence from the Board, comply with orders of the Board, or otherwise indicates an intention not to continue the prosecution or defense of an appeal, the Board may issue an order requiring the offending party to show cause why the appeal should not be either dismissed or granted, as appropriate. If the offending party shall fail to show such cause, the Board may take such action as it deems reasonable and proper under the circumstances.

EX PARTE COMMUNICATIONS

§ 1241.132 Ex parte communications.

No member of the Board or of the Board's staff shall entertain, nor shall any person directly or indirectly involved in an appeal submit to the Board or the Board's staff, of the record, any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in an appeal. This provision does not apply to consultation among Board members nor to ex parte communications concerning the Board's administrative functions or procedures.

SANCTIONS

§ 1241.133 Sanctions.

If any party fails or refuses to obey an order issued by the Board, the Board may make such order in regard to the failure as it considers necessary to the just and expeditious conduct of the appeal.

Subpart 1241.2—General Procedures

AUTHORITY: 42 U.S.C. 2473.

SOURCE: 45 FR 23407, Apr. 7, 1980, unless otherwise noted.

§ 1241.196 Scope.

Subpart 1241.2 prescribes the procedures for the adjudication of appeals before the NASA Board of Contract Appeals (hereinafter referred to as the "Board") which are filed pursuant to the Contract Disputes Act of 1978, Pub. L. 95-563, or, where pursuant to the Act, an appellant elects the option to proceed in accordance with the Act.

[45 FR 23407, Apr. 7, 1980; 45 FR 35321, May 27, 1980]

PREFACE TO THE RULES

§ 1241.197 Jurisdiction of the Board.

The NASA Board of Contract Appeals (referred to herein as the "Board") shall consider and determine appeals from decisions of contracting officers pursuant to the Contract Disputes Act of 1978 (Pub. L. 95-563, 41 U.S.C. 601-613) relating to contracts made by (a) the National Aeronautics and Space Administration, or (b) any other executive agency when such agency or the Administrator for Federal Procurement Policy has designated the Board to decide the appeal. The Board is authorized to grant any relief that would be available to a litigant asserting a contract claim in the Court of Claims. In addition, the Board may perform other duties as assigned by the Administrator which are not inconsistent with its statutory duties.

[45 FR 23407, Apr. 7, 1980; 45 FR 35321, May 27, 1980]

§ 1241.198 Location and organization of the Board.

(a) The Board is located in Washington, D.C., and its mailing address is the Board of Contract Appeals, National Aeronautics and Space Administration, Washington, D.C. 20546. The telephone number of the Board is (202) 755-3481.

(b) The Board consists of a Chairperson, Vice Chairperson, and other members, all of whom are attorneys at law duly licensed by any state, commonwealth, territory, or the District of Columbia. Normally, the appeals are assigned to a panel of at least two members of the Board. If a panel of two members is unable to agree upon a decision, the Chairperson may assign a third member to consider the appeal. The Chairperson is designated as Chief Administrative Judge and the other Board members are designated as Administrative Judges.

[45 FR 23407, Apr. 7, 1980; 45 FR 35321, May 27, 1980]

§ 1241.199 General guidelines.

(a) *Rules.* Appeals referred to the Board are handled in accordance with the rules of the Board.

(b) *Administration and interpretation of rules.* Emphasis is placed upon the sound administration of these rules in specific cases, because it is impracticable to articulate a rule to fit every possible circumstance which may be encountered. These rules will be interpreted so as to secure a just and inexpensive determination of appeals without unnecessary delay.

(c) *Preliminary procedures.* Preliminary procedures are available to encourage full disclosure of relevant and material facts, and to discourage unwarranted surprise.

(d) *Time, computation and extensions.* (1) All time limitations specified for various procedural actions are computed as maximums, and are not to be fully exhausted if the action described can be accomplished in a lesser period. These time limitations are similarly eligible for extension in appropriate circumstances, on good cause shown.

(2) Except as otherwise provided by law, in computing any period of time prescribed by these rules or by any order of the Board, the day of the event from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, Sunday, or a legal holiday, in which event the period shall run to the end of the next business day.

(3) Requests for extensions of time from either party shall be made in writing and stating good cause therefore.

[45 FR 23407, Apr. 7, 1980; 45 FR 35321, May 27, 1980]

§ 1241.200 Ex parte communications.

No members of the Board or the Board's staff shall entertain, nor shall any person directly or indirectly involved in an appeal, submit to the Board or the Board's staff, off the record, any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in an appeal. This provision does not apply to consultation among Board members nor to ex parte communications concerning the Board's administrative functions or procedures.

[45 FR 23407, Apr. 7, 1980; 45 FR 35321, May 27, 1980]

PRELIMINARY PROCEDURES

§ 1241.201 Appeals, how taken.

(a) Notice of an appeal shall be in writing and mailed or otherwise furnished to the Board within 90 days from the date of receipt of a contracting officer's decision. A copy thereof shall be furnished to the contracting officer from whose decision the appeal is taken.

(b) Where the contractor has submitted a claim of $50,000 or less to the contracting officer and has requested a written decision within 60 days from receipt of the request, and the contracting officer has not done so, the contractor may file a notice of appeal as provided in paragraph (a) of this section, citing the failure of the contracting officer to issue a decision.

(c) Where the contractor has submitted a claim in excess of $50,000 to the contracting officer and the contracting officer has failed to issue a decision within a reasonable time, the contractor may file a notice of appeal as provided in paragraph (a) of this section citing the failure to issue a decision.

(d) Upon docketing of appeals filed pursuant to paragraphs (b) or (c) of this section, the Board may, at its option, stay further proceedings pending issuance of a final decision by the contracting officer within such period of time as is determined by the Board.

(e) In lieu of filing a notice of appeal under paragraphs (b) or (c) of this section, the contractor may request the Board to direct the contracting officer to issue a decision in a specified period of time, as determined by the Board in the event of undue delay on the part of the contracting officer.

§ 1241.202 Notice of appeal, contents of.

A notice of appeal should indicate that an appeal is being taken and should identify the contract (by number), the decision from which the appeal is taken, and the amount in dispute, if known. The notice of appeal should be signed personally by the appellant (the contractor taking the appeal), or by the appellant's duly authorized representative or attorney. The complaint referred to in § 1241.206 may be filed with the notice of appeal, or the appellant may designate the notice of appeal as a complaint, if it otherwise fulfills the requirements of a complaint.

§ 1241.203 Docketing of appeals.

When a notice of appeal in any form has been received by the Board, it shall be docketed promptly. Notice in writting shall be given to the appellant with a copy of these rules, and to the contracting officer.

§ 1241.204 Preparation, content, organization, forwarding, and status of appeal file.

(a) *Duties of Contracting Officer.* Within 30 days of receipt of an appeal, or notice that an appeal has been filed, the contracting officer shall assemble and transmit to the Board an appeal file consisting of all documents pertinent to the appeal, including:

(1) The decision from which the appeal is taken;

(2) The contract including specifications and pertinent amendments, plans, and drawings;

(3) All correspondence between the parties relevant to the appeal, including the letter or letters of claim in response to which the decision was issued;

(4) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and

(5) Any additional information considered relevant to the appeal.

Within the same time above specified the contracting officer shall furnish the appellant a copy of each document he transmits to the Board, except those in paragraph (a)(2) of this section. As to the latter, a list furnished appellant indicating specific contractual documents transmitted will suffice.

(b) *Duties of the appellant.* Within 30 days after receipt of a copy of the appeal file assembled by the contracting officer, the appellant shall transmit to the Board any documents not contained therein which he considers relevant to the appeal, and furnish two copies of such documents to the government trial attorney.

(c) *Organization of appeal file.* Documents in the appeal file may be originals or legible facsimiles or authenticated copies, and shall be arranged in chronological order where practicable, numbered sequentially, tabbed, and indexed to identify the contents of the file.

(d) *Lengthy documents.* Upon request by either party, the Board may waive the requirements to furnish to the other party copies of bulky, lengthy, or out-of-size documents in the appeal file when inclusion would be burdensome. At the time a party files with the Board a document as to which such a waiver has been granted he shall notify the other party that the document or a copy is available for inspection at the offices of the Board or of the party filing same.

(e) *Status of documents in appeal file.* Documents contained in the appeal file are considered, without further action by the parties, as part of the record upon which the Board will render its decision. However, a party may object, for reasons stated, to consideration of a particular document or documents reasonably in advance of hearing or, if there is no hearing, of settling the record. If such objection is made the Board shall remove the document or documents from the appeal file and permit the party offering the document to move its admission as evidence in accordance with §§ 1241.213 and 1241.220.

(f) Notwithstanding the foregoing, the filing of the § 1241.204 (a) and (b) documents may be dispensed with by the Board either upon request of the appellant in his notice of appeal or thereafter upon stipulation of the parties.

§ 1241.205 Motions.

(a) Any motion addressed to the jurisdiction of the Board shall be promptly filed. Hearing on the motion shall be afforded on application of either party. However, the Board may defer its decision on the motion pending hearing on both the merits and the motion. The Board shall have the right at any time and on its own initiative to raise the issue of its jurisdiction to proceed with a particular case, and shall do so by an appropriate order, affording the parties an opportunity to be heard thereon.

(b) The Board may entertain and rule upon other appropriate motions.

§ 1241.206 Pleadings.

(a) *Appellant.* Within 30 days after receipt of notice of docketing of the appeal, the appellant shall file with the Board an original and two copies of a complaint setting forth simple, concise and direct statements of each of its claims. Appellant shall also set forth the basis, with appropriate reference to contract provisions, of each claim and the dollar amount claimed, to the extent known. This pleading shall fulfill the generally recognized requirements of a complaint, although no particular form is required. Upon receipt of the complaint, the Board shall serve a copy of it upon the Government. Should the complaint not be received within 30 days, appellant's claim and appeal may, if in the opinion of the Board the issues before the Board are sufficiently defined, be deemed to set forth its complaint and the Government shall be so notified.

(b) *Government.* Within 30 days from receipt of the complaint, or the aforesaid notice from the Board, the Government shall prepare and file with the Board an original and two copies of an answer thereto. The answer shall set forth simple, concise and direct statements of Government's defenses to each claim asserted by appellant, including any affirmative defenses available. Upon receipt of the answer, the Board shall serve a copy upon appellant. Should the answer not be received within 30 days, the Board may, in its discretion, enter a general denial on behalf of the Government, and the appellant shall be so notified.

§ 1241.207 Amendments of pleadings or record.

The Board upon its own initiative or upon application by a party may order a party to make a more definite statement of the complaint or answer, or to reply to an answer. The Board may, in its discretion, and within the proper scope of the appeal, permit either party to amend its pleading upon conditions fair to both parties. When issues within the proper scope of the appeal, but not raised by the pleadings, are tried by express or implied consent of the parties, or by permission of the Board, they shall be treated in all respects as if they had been raised therein. In such instances, motions to amend the pleadings to conform to the proof may be entered, but are not required. If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings, it may be admitted within the proper scope of the appeal, provided, however, that the objecting party may be granted a continuance if necessary to enable it to meet such evidence.

§ 1241.208 Hearing election.

After filing of the Government's answer or notice from the Board that it has entered a general denial on behalf of the Government, each party shall advise whether it desires a hearing as prescribed in §§ 1241.217 through 1241.225, or whether it elects to submit its case on the record without a hearing, as prescribed in § 1241.211.

§ 1241.209 Prehearing briefs.

Based on an examination of the pleadings, and its determination of whether the arguments and authorities addressed to the issue are adequately set forth therein, the Board may, in its discretion, require the parties to submit prehearing briefs in any case in which a hearing has been elected pursuant to § 1241.208. If the Board does not require prehearing briefs either party may, in its discretion and upon appropriate and sufficient notice to the other party, furnish a prehearing brief to the Board. In any case where a prehearing brief is submitted, it shall be furnished so as to be received by the Board at least 15 days prior to the date set for hearing, and a copy shall simultaneously be furnished to the other party as previously arranged.

§ 1241.210 Prehearing or presubmission conference.

(a) Whether the case is to be submitted pursuant to § 1241.211 or heard pursuant to §§ 1241.217 through 1241.225, the Board may upon its own initiative, or upon the application of either party, arrange a telephone conference or call upon the parties to appear before an administrative judge of the Board for a conference to consider:

(1) Simplification, clarification, or severing of the issues;

(2) The possibility of obtaining stipulations, admissions, agreements and rulings on admissibility of documents, understandings on matters already of record, or similar agreements that will avoid unnecessary proof;

(3) Agreements and rulings to facilitate discovery;

(4) Limitation of the number of expert witnesses, or avoidance of similar cumulative evidence;

(5) The possibility of agreement disposing of any or all of the issues in dispute; and

(6) Such other matters as may aid in the disposition of the appeal.

(b) The administrative judge of the Board shall make such rulings and orders as may be appropriate to aid in the disposition of the appeal. The results of pretrial conferences, including any rulings and orders, shall be reduced to writing by the administrative judge and this writing shall thereafter constitute a part of the record.

§ 1241.211 Submission without a hearing.

Either party may elect to waive a hearing and to submit its case upon the record before the Board, as settled pursuant to § 1241.213. Submission of a case without hearing does not relieve the parties from the necessity of proving the facts supporting their allegations or defenses. Affidavits, depositions, admissions, answers to interrogatories, and stipulations may be employed to supplement other documentary evidence in the Board record. The Board may permit such submissions to be supplemented by oral argument (transcribed if requested), and by briefs arranged in accordance with § 1241.223.

§ 1241.212 Optional small claims (expedited) and accelerated procedures.

These procedures are available solely at the election of the appellant.

§ 1241.212-1 Election to utilize small claims (expedited) and accelerated procedures.

(a) In appeals where the amount in dispute is $10,000 or less, the appellant may elect to have the appeal processed under a small claims (expedited) procedure requiring decision of the appeal, whenever possible, within 120 days after the Board receives written notice of the appellant's election to utilize this procedure. The details of this procedure appear in § 1241.212-2 of this rule. An appellant may elect the accelerated procedure of paragraph (b) of this section rather than the small claims (expedited) procedure for any appeal eligible for the small claims (expedited) procedure.

(b) In appeals where the amount in dispute is $50,000 or less, the appellant may elect to have the appeal processed under an accelerated procedure requiring decision of the appeal, whenever possible, within 180 days after the Board receives written notice of the appellant's election to utilize this procedure. The details of this procedure appear in § 1241.212-3 of this rule.

(c) The appellant's election of either the small claims (expedited) procedure or the accelerated procedure may be made by written notice within 60 days after receipt of notice of docketing, unless such period is extended by the Board for good cause. The election may not be withdrawn except with permission of the Board and for good cause.

(d) In deciding whether the small claims (expedited) procedure or the accelerated procedure is applicable to a given appeal, the Board shall determine the amount in dispute by adding to the amount claimed by the appellant against the Government the amount claimed by the Government against the appellant. If either party making a claim against the other party does not otherwise state in writing the amount of its claim, the amount claimed by such party shall be the maximum amount which such party represents in writing to the Board that it can reasonably expect to recover against the other.

§ 1241.212-2 The small claims (expedited) procedure.

(a) In cases proceeding under the small claims (expedited) procedure, the following time periods shall apply:

(1) Within 10 days from the Government's first receipt from either the appellant or the Board of a copy of the appellant's notice of election of the small claims (expedited) procedure, if not previously accomplished under § 1241.204, the Government shall send the Board a copy of the contract, the contracting officer's final decision, and the appellant's claim letter or letters, if any; remaining documents required under § 1241.204 shall be submitted in accordance with times specified in that rule unless the Board otherwise directs;

(2) Within 15 days after the Board has acknowledged receipt of appellant's notice of election, the assigned administrative judge shall take the following actions, if feasible, in an informal meeting or a telephone conference with both parties:

(i) Identify and simplify the issues;

(ii) Establish a simplified procedure appropriate to the particular appeal involved;

(iii) Determine whether either party wants a hearing, and if so, fix a time and place therefor;

(iv) Require the Government to furnish all the additional documents relevant to the appeal, and

(v) Establish an expedited schedule for resolution of the appeal.

(b) Pleadings, discovery, and other prehearing activity will be allowed only as consistent with the requirement to conduct the hearing on the date scheduled, or if no hearing is scheduled, to close the record on a date that will allow decisions within the 120-day limit. The Board, in its discretion, may impose shortened time periods for any actions prescribed or allowed under these rules, as necessary to enable the Board to decide the appeal within the 120-day limit, allowing whatever time, up to 30 days, that the Board considers necessary for the preparation of the decision after closing the record and the filing of briefs, if any.

(c) Written decision by the Board in cases processed under the small claims (expedited) procedure will be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single administrative judge. If there has been a hearing, the administrative judge presiding at the hearing may, in the judge's discretion, at the conclusion of the hearing and after entertaining such oral arguments as deemed appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment purposes and to establish the starting date for the period for filing a motion for reconsideration under § 1241.229.

(d) A decision against the Government or the contractor shall have no value as precedent, and in the absence of fraud shall be final and conclusive and may not be appealed or set aside.

§ 1241.212-3 The accelerated procedure.

(a) In cases proceeding under the accelerated procedure, the parties are encouraged, to the extent possible consistent with adequate presentation of their factual and legal positions, to waive pleadings, discovery, and briefs. The Board, in its discretion, may shorten time periods prescribed or allowed elsewhere in these rules, including § 1241.204, as necessary to enable the Board to decide the appeal within 180 days after the Board has received the appellant's notice of election of the accelerated procedure, and may reserve 30 days for preparation of the decision.

(b) Written decision by the Board in cases processed under the accelerated procedure will normally be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single administrative judge with the concurrence of the chair or a vice chair or other designated administrative judge, or by a majority among these two and an additional designated member in case of disagreement. Alternatively, in cases where the amount in dispute is $10,000 or less as to which the accelerated procedure has been elected and in which there has been a hearing, the single administrative judge presiding at the hearing may, with the concurrence of both parties, at the conclusion of the hearing and after entertaining such oral arguments as deemed appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment purposes, and to establish the starting date for the period for filing a motion for reconsideration under § 1241.229.

§ 1241.212-4 Motions for reconsideration in § 1241.212 cases.

Motions for reconsideration of cases decided under either the small claims (expedited) procedure or the accelerated procedure need not be decided within the original 120-day or 180-day limit, but all such motions shall be processed and decided rapidly so as to fulfill the intent of this rule.

§ 1241.213 Settling the record.

(a) The record upon which the Board's decision will be rendered consists of the documents furnished under §§ 1241.204 and 1241.212 to the extent admitted in evidence, and the following items, if any: pleadings, prehearing conference memoranda or orders, prehearing briefs, depositions or interrogatories received in evidence, admissions, stipulations, transcripts of conferences and hearings, hearing exhibits, post-hearing briefs, and documents which the Board has specifically designated be made a part of the record. The record will, at all reasonable times, be available for inspection by the parties at the office of the Board.

(b) Except as the Board may otherwise order in its discretion, no proof shall be received in evidence after completion of an oral hearing or, in cases submitted on the record, after notification by the Board that the case is ready for decision.

(c) The weight to be attached to any evidence of record will rest within the sound discretion of the Board. The Board may in any case require either party, with appropriate notice to the other party, to submit additional evidence on any matter relevant to the appeal.

§ 1241.214 Discovery—depositions.

(a) *General policy and protective orders.* The parties are encouraged to engage in voluntary discovery procedures. In connection with any deposition or other discovery procedure, the Board may make any order required to protect a party or person from annoyance, embarrassment, or undue burden or expense. Those orders may include limitations on the scope, method, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents.

(b) *When depositions permitted.* After an appeal has been docketed and complaint filed, the parties may mutually agree to, or the Board may, upon application of either party, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purpose of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence.

(c) *Orders on depositions.* The time, place, and manner of taking depositions shall be as mutually agreed by the parties, or failing such agreement, governed by order of the Board.

(d) *Use as evidence.* No testimony taken by depositions shall be considered as part of the evidence in the hearing of an appeal until such testimony is offered and received in evidence at such hearing. It will not ordinarily be received in evidence if the deponent is present and can testify at the hearing. In such instances, however, the deposition may be used to contradict or impeach the testimony of the deponent given at the hearing. In cases submitted on the record, the Board may, in its discretion, receive depositions to supplement the record.

(e) *Expenses.* Each party shall bear its own expenses associated with the taking of any deposition.

(f) *Subpoenas.* Where appropriate, a party may request the issuance of a subpoena under the provisions of § 1241.221.

§ 1241.215 Interrogatories to parties, admission of facts, and production and inspection of documents.

After an appeal has been docketed and complaint filed with the Board, a party may serve on the other party: (a) Written interrogatories to be answered separately in writing, signed under oath and answered or objected to within 30 days after service; (b) a request for the admission of specified facts and/or the authenticity of any documents, to be answered or objected to within 30 days after service; the factual statements and the authenticity of the documents to be deemed admitted upon failure of a party to respond to the request; and (c) a request for the production, inspection and copying of any documents or objects not privileged, which reasonably may lead to the discovery of admissible evidence, to be answered or objected to within 30 days after serivce. Any discovery engaged in under this rule shall be subject to the provisions of § 1241.214 with respect to general policy and protective orders, and of § 1241.233 with respect to sanctions.

§ 1241.216 Service of papers other than subpoenas.

Papers shall be served personally or by mail, addressed to the party upon whom service is to be made. Copies of complaints, answers and briefs shall be filed directly with the Board. The party filing any other paper with the Board shall send a copy thereof to the opposing party, noting on the paper filed with the Board that a copy has been so furnished. Subpoenas shall be served as provided in § 1241.221.

HEARINGS

§ 1241.217 Where and when held.

Hearings will be held at such places determined by the Board to best serve the interests of the parties and the Boad. Hearings will be scheduled at the discretion of the Board with due consideration to the regular order of appeals, § 1241.212 requirements, and other pertinent factors. On request or motion by either party and for good cause, the Board may, in its discretion, adjust the date of a hearing.

§ 1241.218 Notice of hearings.

The parties shall be given at least 15 days notice of the time and place set for hearings. In scheduling hearings, the Board will consider the desires of the parties and the requirement for just and inexpensive determination of appeals without unnecessary delay. Notices of hearings shall be promptly acknowledged by the parties.

§ 1241.219 Unexcused absence of a party.

The unexcused absence of a party at the time and place set for hearing will not be occasion for delay. In the event of such absence, the hearing will proceed and the case will be regarded as submitted by the absent party as provided in § 1241.211.

§ 1241.220 Hearings: nature, examination of witnesses.

(a) *Nature of hearings.* Hearings shall be as informal as may be reasonable and appropriate under the circumstances. Appellant and the Government may offer such evidence as they deem appropriate and as would be admissible under the Federal Rules of Evidence or in the sound discretion of the presiding administrative judge. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The Board may require evidence in addition to that offered by the parties.

(b) *Examination of witnesses.* Witnesses before the Board will be examined orally under oath or affirmation, unless the presiding administrative judge shall otherwise order. If the testimony of a witness is not given under oath, the Board may advise the witness that his statements may be subject to the provisions of Title 18, U.S. Code, sections 287 and 1001, and any other provision of law imposing penalties for knowingly making false representations in connection with claims against the United States or in any matter within the jurisdiction of any department or agency thereof.

§ 1241.221 Subpoenas.

(a) *General.* Upon written request of either party filed with the recorder, or on his own initiative, the administrative judge to whom a case is assigned or who is otherwise designated by the chair may issue a subpoena requiring:

(1) *Testimony as a deposition.* The deposing of a witness in the city or county where he resides or is employed or transacts his business in person, or at another location convenient for him that is specifically determined by the Board;

(2) *Testimony at a hearing.* The attendance of a witness for the purpose of taking testimony at a hearing; and

(3) *Production of books and papers.* In addition to paragraphs (a) (1) or (2) of this section, the production by the witness at the deposition or hearing of books and papers designated in the subpoena.

(b) *Voluntary cooperation.* Each party is expected (1) to cooperate and make available witnesses and evidence under its control as requested by the other party, without issuance of a subpoena, and (2) to secure voluntary attendance of desired third-party witnesses and production of desired third-party books, papers, documents, or tangible things whenever possible.

(c) *Requests for subpoenas.* (1) A request for subpoena shall normally be filed at least:

(i) 15 days before a scheduled deposition where the attendance of a witness at a deposition is sought;

(ii) 30 days before a scheduled hearing where the attendance of a witness at a hearing is sought. In its discretion the Board may honor requests for subpoenas not made within these time limitations.

(2) A request for a subpoena shall state the reasonable scope and general relevance to the case of the testimony and of any books and papers sought.

(d) *Requests to quash or modify.* Upon written request by the person subpoenaed or by a party, made *within* 10 days after service but in any event not later than the time specified in the supoena for compliance, the Board may (1) quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or (2) require the person in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed books and papers. Where circumstances require, the Board may act upon such a request at any time after a copy has been served upon the opposing party.

(e) *Form; issuance.* (1) Every subpoena shall state the name of the Board and the title of the appeal, and shall command each person to whom it is directed to attend and give testimony, and if appropriate, to produce specified books and papers at a time and place therein specified. In issuing a subpoena to a requesting party, the administrative judge shall sign the subpoena and may, in his discretion, enter the name of the witness and otherwise leave it blank. The party to whom the subpoena is issued shall complete the subpoena before service.

(2) Where the witness is located in a foreign country, a letter rogatory or subpoena may be issued and served under the circumstances and in the manner provided in 28 U.S.C. 1781 to 1784.

(f) *Service.* (1) The party requesting issuance of a subpoena shall arrange for service.

(2) A subpoena requiring the attendance of a witness at a deposition or hearing may be served at any place. A subpoena may be served by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by personally delivering a copy to that person and tendering the fees for one

day's attendance and the mileage provided by 28 U.S.C. 1821 or other applicable law; however, where the subpoena is issued on behalf of the Government, money payments need not be tendered in advance of attendance.

(3) The party at whose instance a subpoena is issued shall be responsible for the payment of fees and mileage of the witness and of the officer who serves the subpoena. The failure to make payment of such charges on demand may be deemed by the Board as a sufficient ground for striking the testimony of the witness and the books or papers the witness has produced.

(g) *Contumacy or refusal to obey a subpoena.* In case of contumacy or refusal to obey a subpoena by a person who resides, is found, or transacts business within the jurisdiction of a United States District Court, the Board will apply to the Court through the Attorney General of the United States for an order requiring the person to appear before the board or a member thereof to give testimony or produce evidence or both. Any failure of any such person to obey the order of the Court may be punished by the Court as a contempt thereof.

§ 1241.222 Copies of papers.

When books, records, papers, or documents have been received in evidence, a true copy thereof or of such part thereof as may be material or relevant may be substituted therefor, during the hearing or at the conclusion thereof.

§ 1241.223 Posthearing briefs.

Posthearing briefs may be submitted upon such terms as may be directed by the presiding administrative judge at the conclusion of the hearing.

§ 1241.224 Transcript of proceedings.

Testimony and argument at hearings shall be reported verbatim, unless the Board otherwise orders. Waiver of transcript may be especially suitable for hearings under § 1241.212-2. Transcripts of the proceedings shall be supplied to the parties at such rates as may be fixed by contract with the reporter.

§ 1241.225 Withdrawal of exhibits.

After a decision has become final the Board may, upon request and after notice to the other party, in its discretion permit the withdrawal of original exhibits, or any part thereof by the party entitled thereto. The substitution of true copies of exhibits or any part thereof may be required by the Board in its discretion as a condition of granting permission for such withdrawal.

REPRESENTATION

§ 1241.226 The appellant.

An individual appellant may appear before the Board in person, a corporation by one of its officers; and a partnership or joint venture by one of its members; or any of these by an attorney at law duly licensed in any state, commonwealth, territory, the District of Columbia, or in a foreign country. An attorney representing an appellant shall file a written notice of appearance with the Board.

§ 1241.227 The government.

Government counsel may, in accordance with their authority, represent the interest of the Government before the Board. They shall file notices of appearance with the Board, and notice thereof will be given appellant or appellant's attorney in the form specified by the Board from time to time.

DECISIONS

§ 1241.228 Decisions.

Decisions of the Board will be made in writing and copies of the decision will be forwarded simultaneously to both parties. The rules of the Board and all final orders and decisions (except those required for good cause to be held confidential and not cited as precedents) shall be open for public inspection at the offices of the Board. Decisions of the Board will be made solely upon the record, as described in § 1241.213.

MOTION FOR RECONSIDERATION

§ 1241.229 Motion for reconsideration.

A motion for reconsideration may be filed by either party. It shall set forth specifically the grounds relied upon to sustain the motion. The motion shall be filed within 30 days from the date of the receipt of a copy of the decision of the Board by the party filing the motion.

SUSPENSIONS; DISMISSALS AND DEFAULTS; REMANDS

§ 1241.230 Suspensions; dismissal without prejudice.

The Board may suspend the proceedings by agreement of counsel for settlement discussions, or for good cause shown. In certain cases, appeals docketed before the Board are required to be placed in a suspense status and the Board is unable to proceed with disposition thereof for reasons not within the control of the Board. Where the suspension has continued, or may continue, for an inordinate length of time, the Board may, in its discretion, dismiss such appeals from its docket without prejudice to their restoration when the cause of suspension has been removed. Unless either party or the Board acts within three years to reinstate any appeal dismissed without prejudice, the dismissal shall be deemed with prejudice.

§ 1241.231 Dismissal or default for failure to prosecute or defend.

Whenever a record discloses the failure of either party to file documents required by these rules, respond to notices or correspondence from the Board, comply with orders of the Board, or otherwise indicates an intention not to continue the prosecution or defense of an appeal, the Board may, in the case of a default by the appellant, issue an order to show cause why the appeal should not be dismissed or, in the case of a default by the Government, issue an order to show cause why the Board should not act thereon pursuant to § 1241.233. If good cause is not shown, the Board may take appropriate action.

§ 1241.232 Remand from court.

Whenever any court remands a case to the Board for further proceedings, each of the parties shall, within 20 days of such remand, submit a report to the Board recommending procedures to be followed so as to comply with the court's order. The Board shall consider the reports and enter special orders governing the handling of the remanded case. To the extent the court's directive and time limitations permit, such orders shall conform to these rules.

SANCTIONS

§ 1241.233 Sanctions.

If any party fails or refuses to obey an order issued by the Board, the Board may then make such order as it considers necessary to the just and expeditious conduct of the appeal.

EFFECTIVE DATE

§ 1241.234 Effective date.

These rules shall apply (a) mandatorily, to all appeals relating to contracts entered into on or after March 1, 1979, and (b) at the contractor's election, to appeals relating to earlier contracts, with respect to claims pending before the contracting officer on March 1, 1979, or initiated thereafter.

PART 1245—PATENTS AND OTHER INTELLECTUAL PROPERTY RIGHTS

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Subpart 1—Patent Waiver Regulations

AUTHORITY: 42 U.S.C. 2457, 35 U.S.C. 200 *et seq.*

SOURCE: 52 FR 43748, Nov. 16, 1987, unless otherwise noted.

§ 1245.100 Scope.

This subpart prescribes regulations for the waiver of rights of the Government of the United States to inventions made under NASA contract in conformity with section 305 of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2457).

§ 1245.101 Applicability.

The provisions of the subpart apply to all inventions made or which may be made under conditions enabling the Administrator to determine that the rights therein reside in the Government of the United States under section 305(a) of the National Aeronautics and Space Act of 1958, as amended, 42 U.S.C. 2457(a). The provisions do not apply to inventions made under any contract, grant, or cooperative agreement with a nonprofit organization or small business firm that are afforded the disposition of rights as provided in 35 U.S.C. 200-204 (Pub. L. 96-517, 94 Stat. 3019, 3020, 3022 and 3023; and Pub. L. 98-620, 98 Stat. 3364-3367).

§ 1245.102 Definitions and terms.

As used in this subpart:

(a) *Contract* means any actual or proposed contract, agreement, understanding, or other arrangement with the National Aeronautics and Space Administration (NASA) or another Government agency on NASA's behalf, including any assignment, substitution of parties, or subcontract executed or entered into thereunder, and including NASA grants awarded under the authority of 42 U.S.C. 1891-1893.

(b) *Contractor* means the party who has undertaken to perform work under a contract or subcontract.

(c) *Invention* includes any art, method, process, machine, manufacture, design, or composition or matter, or any new and useful improvement thereof, or any variety of plant, which is or may be patentable under the Patent Laws of the United States of America or any foreign country.

(d) *Made*, when used in relation to any invention, means the conception or first actual reduction to practice of such invention.

(e) *Practical application* means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are to the extent permitted by law or Govenment regulations available to the public on reasonable terms.

(f) *Board* means the NASA Inventions and Contributions Board established by the Administrator of NASA within the Administration under section 305(f) of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2457(f)).

(g) *Chairperson* means Chairperson of the NASA Inventions and Contributions Board.

(h) *Petitioner* means a contractor or prospective contractor who requests that the Administrator waive rights in an invention or class of inventions made or which may be made under a NASA contract. In the case of an identified invention, the petitioner may be the inventor(s).

(i) *Government agency* includes any executive department, independent commission, board, office, agency, administration, authority, Government corporation, or other Government establishment of the executive branch of the Government of the United States of America.

(j) *Administrator* means the Administrator of the National Aeronautics and Space Administration or the Administrator's duly authorized representative.

§ 1245.103 Policy.

(a) In implementing the provisions of section 305(f) of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2457(f)), and in determining when the interests of the United States would be served by waiver of all or any part of the rights of the United States in inventions made in the performance of work under NASA contracts, the Administrator will be guided by the objectives set forth in the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2451-2477) and by the basic policy of the Presidential Memorandum and Statement of Government Patent Policy to the Heads of the Executive Departments and agencies dated February 18, 1983. Among the most important goals are to provide incentives to foster inventiveness and encourage the reporting of inventions made under NASA contracts, to provide for the widest practicable dissemination of new technology resulting from NASA programs, and to promote early utilization, expeditious development, and continued availability of this new technology for commercial purposes and the public benefit. In applying this regulation, both the need for incentives to draw forth private initiatives and the need to promote healthy competition in industry must be weighed.

(b) Several different situations arise when waiver of all or any part of the rights of the United States may be requested and are prescribed in §§ 1245.104-1245.106. Under § 1245.104, advance waiver of rights to any or all of the inventions which may be made under a contract may be requested prior to the execution of the contract, or within 30 days after execution of the contract. Waiver of rights to an identified invention made and reported under a contract are to be requested under § 1245.105, and may be requested under this provision even though a request under § 1245.104 was not made, or if made, was not granted. Waiver of foreign rights under § 1245.106 may be requested concurrently with domestic rights under § 1245.104 or § 1245.105, or may be made independently.

(c) With respect to inventions which may be or are made or conceived in the course of or under contracts for research, development or demonstration work awarded by NASA on behalf of the Department of Energy (DOE) or in support of a DOE program, on a reimbursable basis pursuant to agreement between DOE and NASA, the waiver policy, regulations, and procedures of DOE will be applied. NASA will normally grant waiver of rights to inventions made under contracts awarded by NASA on behalf of, or in support of, programs funded by another Government agency, unless the funding agency recommends and justifies denial of the waiver. See § 1245.110(c) and § 1245.111(b).

§ 1245.104 Advance waivers.

(a) The provisions of this section apply to petitions for waiver of domestic rights to any or all of the inventions which may be made under a contract.

(b) The NASA Inventions and Contributions Board normally will recommend grant of a request for advance waiver of domestic rights submitted prior to execution of contract or within 30 days after execution of the contract unless the Board finds that the interests of the United States will be better served by restricting or eliminating all or part of the rights of the contractor in one or more of the following situations:

(1) When the contractor is not located in the United States or does not have a place of business in the United States or is subject to the control of a foreign government;

(2) When a determination has been made by Government authority which is authorized by statute or Executive order to conduct foreign intelligence or counter-intelligence activities that the restriction or elimination of the right to retain title to any inventions made in the performance of work under the contract is necessary to protect the security of such activities; or

(3) Where the Board finds that exceptional circumstances exist, such that restriction or elimination of the right to retain title will better promote one or more of the following objectives:

(i) Promoting the utilization of inventions arising from federally supported research and development;

(ii) Encouraging maximum participation of industry in federally-supported research and development;

(iii) Ensuring that inventions are used in a manner to promote free competition and enterprise;

(iv) Promoting the commercialization and public availability of inventions made in the United States by United States industry and labor; and

(v) Ensuring that the Government obtains sufficient rights in federally-supported inventions to meet the needs of the Government and protect the public against nonuse or unreasonable use of inventions.

(c)(1) An advance waiver, when granted, will be subject to the reservations set forth in § 1245.107. Normally, the reservations of § 1245.107(a), License to the Government, and § 1245.107(b), March-in rights, will apply. However, should one or more of the situations set forth in paragraphs (b)(1) through (b)(3), of this section exist, rather than denying the advance waiver request, the Board may recommend restricting or eliminating only part of the rights of the contractor to the extent necessary to address the particular situation, consistent with the policy and goals of § 1245.103. In that event, the waiver grant will be subject to additional reservations as provided for in § 1245.107(c).

(2) An advance waiver, when granted, will apply only to inventions reported to NASA under the applicable terms of the contract and a designation made within 6 months of the time of reporting (or a reasonable time thereafter permitted for good cause shown) that the contractor elects title to the invention and intends to file or has filed a U.S. patent application. Such election will be made by notification in writing to the patent representative designated in the contract. Title to all other inventions made under the contract are subject to section 305(a) of the National Aeronautics and Space Act of 1958, as amended, 42 U.S.C. 2457(a). The granting of the advance waiver does not otherwise relieve a contractor of any of the invention identification or reporting requirements set forth in the applicable patent rights clause in the contract.

(3) The waiver shall extend to the invention claimed in any patent application filed on the reported invention, including any subsequent divisional or continuation application thereof, provided the claims of the subsequent ap

plication do not substantially change the scope of the reported invention.

(d) When a petition for waiver is submitted under paragraph (b) of this section, prior to contract execution, it will be processed expeditiously so that a decision on the petition may be reached prior to execution of the contract. However, if there is insufficient time or insufficient information is presented, or for other reasons which do not permit a recommendation to be made without unduly delaying execution of the contract, the Board will inform the contracting officer that no recommendation has been made and the reasons therefor. The contracting officer will then notify the petitioner of the Board's action.

(e) After notification by the contracting officer under paragraph (d) of this section, the petitioner may, upon its execution of the contract, or within 30 days, request the Board to reconsider the matter under paragraph (b) of this section either on the record or with any additional statements submitted in the subpart of the original petition.

(f) A waiver granted pursuant to a petition submitted under this section shall extend to any contract changes, modifications, or supplemental agreements, so long as the purpose of the contract or the scope of work to be performed is not substantially changed.

§ 1245.105 Waiver after reporting inventions.

(a) The provisions of this section apply to petitions for waiver of domestic rights to identified inventions which have been reported to NASA and to which a waiver of rights has not been granted pursuant to § 1245.104.

(b)(1) When an individual identified invention has been reported to NASA under the applicable terms of the contract and waiver of rights has not been granted under § 1245.104, the Board normally will recommend grant of a request for waiver of domestic rights to such invention if the request is received within 8 months of first disclosure to NASA (or such longer period that the Board may permit for good cause shown), unless the Board finds that one or more of the situations set forth in § 1245.104(b)(3) (i) through (v) exist. When granted, the waiver will be subject to the reservations set forth in § 1245.107 in the same manner as discussed in § 1245.104(c)(1).

(2) The waiver shall extend to the invention claimed in the patent application filed on the reported invention, including any subsequent divisional or continuation application thereof, provided the claims of the subsequent application do not substantially change the scope of the reported invention.

§ 1245.106 Waiver of foreign rights.

(a) The Board will consider the waiver of foreign rights in any designated country concurrently with the waiver of domestic rights when so requested under § 1245.104 or § 1245.105.

(b) The Board will also consider a separate request for foreign rights for an individual identified invention in any designated country if a request was not made pursuant to paragraph (a) of this section, or for countries not designated pursuant to paragraph (a) of this section.

(c) Waiver of foreign rights will normally be granted under paragraph (a) or paragraph (b) of this section in any designated country unless; (1) The Board finds that the economic interests of the United States will not be served thereby; or unless (2) in the case of an individual identified invention under paragraph (b) of this section, NASA has determined, prior to the request, to file a patent application in the designated country.

(d) If, subsequent to the granting of the petition for foreign rights, the petitioner requests and designates additional countries in which it wishes to secure patents, the Chairperson may grant such request, in whole or in part, without further action by the Board.

§ 1245.107 Reservations.

(a) *License to the Government.* Any invention for which waiver of domestic or foreign rights has been granted under this subpart shall be subject to the reservation by the Administrator of an irrevocable, nonexclusive, nontransferable, royalty-free license for the practice of the invention throughout the world by or on behalf of the United States or any foreign government pursuant to any treaty or agreement with the United States.

(b) *March-in rights.* For any invention for which waiver of rights has been granted under this subpart, NASA has the right in accordance with 35 U.S.C. 203 and 210, and with the procedures set forth in § 1245.117 and 37 CFR 401.6, to require the contractor, an assignee, or exclusive licensee of the invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the contractor, assignee, or exclusive licensee refuses such a request, NASA has the right to grant such a license itself if NASA determines that:

(1) Such action is necessary because the contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the contractor, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the contractor, assignee, or licensees; or

(4) Such action is necessary because the agreement required by the "Preference for United States industry" has not been obtained or waived or because a licensee of the exclusive right to use or sell any invention in the United States is in breach of such agreement.

(c) *Additional reservations.* In the event one or more of the situations set forth in § 1245.104 (b)(1) through (b)(3) exist, the Board may determine to recommend partial grant of the waiver request (rather than denial) by making the grant subject to additional reservations (than those set forth in (a) and (b) of this section) to the extent necessary to address the particular situation. Such additional reservations may include, but not be limited to, field-of-use or terrestrial-use limitations, or additions to the march-in rights.

§ 1245.108 License to contractor.

(a) Each contractor reporting an invention is granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on the invention and in any resulting patent in which the Government acquires title. The license extends to the contractor's domestic subsidiaries and affiliates, if any, within the corporate structure of which the contractor is a party and includes the right to grant sublicenses of the same scope to the extent the contractor was legally obligated to do so at the time the contract was awarded. The license and right is transferable only with the approval of the Administrator except when transferred to the successor of that part of the contractor's business to which the invention pertains.

(b) The contractor's domestic license may be revoked or modified by the Administrator to the extent necessary to achieve expeditious practical application of the invention pursuant to an application for an exclusive license submitted in accordance with the Licensing of NASA Inventions (14 CFR 1245.2). This license will not be revoked in that field of use and/or the geographical areas in which the contractor has achieved practical application and continues to make the benefits of the invention available to the public on reasonable terms. The license in any foreign country may be revoked or modified at the discretion of the Administrator to the extent the contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(c) Before revocation or modification of the license, the contractor will be provided a written notice of the Administrator's intention to revoke or modify the license, and the contractor will be allowed 30 days (or any other time as may be allowed by the Administrator for good cause shown by the contractor) after the notice to show cause why the license should not be revoked or modified. The contractor shall have the right to appeal, under the Licensing of NASA Inventions (14 CFR 1245.2), any decision concerning the revocation or modification of its license.

§ 1245.109 Assignment of title to NASA.

(a) The instrument of waiver set forth in § 1245.115(c) shall be voided by NASA with respect to the domestic title to any invention for which a patent application has not been filed within 1 year (or a reasonable time thereafter for good cause shown) from notification to NASA of election of title, as required by § 1245.104(c)(2), for an advanced waiver pursuant to § 1245.104, or within 1 year from the granting of a waiver for an individual invention granted pursuant to § 1245.105.

(b) The instrument of waiver set forth in § 1245.115(c) shall be voided by NASA with respect to title in any foreign country for which waiver has been granted pursuant to § 1245.106, if a patent application has not been filed in that country (or in the European Patent Office or under the Patent Cooperation Treaty and that country designated) within either 10 months (or a reasonable time thereafter for good cause shown) from the date a corresponding U.S. patent application has been filed or 6 months (or a reasonable time thereafter for good cause shown) from the date a license is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(c) In any country in which the waiver recipient decides not to continue prosecution of any application, to pay maintenance fees on, or defend in reexamination or opposition proceedings on a patent on a waived invention, the waiver recipient shall notify the patent representative within sufficient time for NASA to continue prosecution, pay the maintenance fee or defend the reexamination or opposition, and upon written request, convey title to NASA and execute all papers necessary for NASA to proceed with the appropriate action.

§ 1245.110 Content of petitions.

(a) Each request for waiver of domestic or foreign rights under § 1245.104, § 1245.105, or § 1245.106 shall be by petition to the Administrator and shall include:

(1) An identification of the petitioner, its place of business, and address;

(2) If the petitioner is represented by counsel, the name, address, and telephone number of the counsel;

(3) A citation to the section (§ 1245.104, § 1245.105, or § 1245.106) under which the petition is submitted, the nature and extent of the rights requested, and a positive statement that waiver of rights under the cited section is being requested;

(4) If the petitioner is an employee inventor of the contractor, a statement from the contractor that the contractor does not object to this petition.

(5) Information identifying the proposed contract or resulting contract, if any;

(6) A designation of the country or countries, the United States of America and/or foreign, in which waiver of title is requested;

(7) A copy of the invention disclosure if the request is for an individual identified invention (under § 1245.105);

(8) The name, address, and telephone number of the party with whom the Board is to communicate when the request is acted upon;

(9) Whether the petitioner is an entity of or under the control of a foreign government;

(10) The signature of the petitioner or its authorized representative; and

(11) The date of the petition.

(b) No specific forms need be used. Requests for advanced waiver should, preferably, be included with the proposal, but in any event in advance of negotiations.

(c) *Petitions for waiver under contracts funded by another agency.* The content of the petitions for waiver of title to inventions made under contracts awarded by NASA on behalf of the Department of Energy under § 1245.103(c) shall follow the procedures and form prescribed by and shall be acted on by that agency. Petitions under contracts awarded by

NASA on behalf of other agencies will be coordinated with the agency before action is taken by the Board.

§ 1245.111 Submission of petitions.

(a) Petitions for advance waiver of domestic rights under § 1245.104 or for advance waiver of foreign rights under § 1245.106 presented prior to contract execution, must be submitted to the contracting officer. Any petition submitted by a prospective contractor and selected for negotiation of a contract will be processed and forwarded to the Board for consideration. All other petitions will be submitted to the patent representative designated in the contract for processing prior to forwarding to the Board.

(b) A copy of any waiver petitions submitted under § 1245.103(c) should be forwarded to the appropriate NASA field installation patent counsel, if not supplied earlier, for (1) transmittal to the Department of Energy for processing by that agency, or (2) coordination with other agencies, as applicable.

§ 1245.112 Notice of proposed Board action and reconsideration.

(a) *Notice.* Except as provided by § 1245.104(d), the Board will notify the petitioner, through the contracting officer, with respect to petitions for advance waiver prior to contract execution, and directly to the petitioner for all other petitions:

(1) Whether it proposes to recommend to the Administrator that the petition be:

(i) Granted in the extent requested;

(ii) Granted in an extent different from that requested; or

(iii) Denied.

(2) Of the reasons for any recommended action adverse to or different from the waiver of rights requested by the petitioner.

(b) *Request for reconsideration and statements required.* (1) If, under paragraph (a) of this section, the Board notifies the petitioner that the Board proposes to recommend action adverse to or different from the waiver requested, the petitioner may, within the period as the Board may set, but not less than 15 days from the notification, request reconsideration by the Board.

(2) If reconsideration has been requested within the prescribed time, the petitioner shall, within 30 days from the date of the request for reconsideration, or within any other time as the Board may set, file its statement setting forth the points, authorities, arguments, and any additional material on which it relies.

(3) Upon filing of the reconsideration statement by the petitioner, the petition will be assigned for reconsideration by the Board upon the contents of the petition, the record, and the reconsideration statement submitted by the petitioner.

(4) The Board, after its reconsideration, will promptly notify the petitioner of its proposed recommendation to the Administrator. If the Board's proposed action is adverse to, or different from, the waiver requested, the petitioner may request an oral hearing within the time as the Board has set.

§ 1245.113 Hearing procedure.

(a) If the petitioner requests an oral hearing within the time set, under § 1245.112(b)(4), the Board shall set the time and place for the hearing and shall notify the petitioner.

(b) Oral hearings held by the Board shall be open to the public and shall be held in accordance with the following procedures:

(1) Oral hearings shall be conducted in an informal manner, with the objective of providing the petitioner with a full opportunity to present facts and arguments in support of the petition. Evidence may be presented through means of witnesses, exhibits, and visual aids as are arranged for by the petitioner. Petitioner may be represented by any person including its attorney. While proceedings will be ex parte, members of the Board and its counsel may address questions to witnesses called by the petitioner, and the Board may, at its option, enlist the aid of technical advisors or expert witnesses. Any person present at the hearing may make a statement for the record.

(2) A transcript or equivalent record of the proceeding shall be arranged for by the Board. The petitioner shall submit for the record a copy of any

exhibit or visual aid utilized during the hearing.

§ 1245.114 Findings and recommendations of the Board.

(a) *Findings of the Board.* The Board shall consider the petition, the NASA contract, if relevant, the goals cited in § 1245.103(a), the effect of the waiver on the objectives of the related NASA programs, and any other available facts and information presented to the Board by an interested party. The Board shall document its findings.

(b) *Recommendation of the Board.* (1) Except as provided in § 1245.104(d), after making the findings of fact, the Board shall formulate its proposed recommendation to the Administrator as to the grant of waiver as requested, the grant of waiver upon terms other than as requested, or denial of waiver.

(2) If the Board proposes to recommend, initially or upon reconsideration or after oral hearing, that the petition be granted in the extent requested or, in other cases, where the petitioner does not request reconsideration or a hearing during the period set for the action or informs the Board that the action will not be requested, or fails to file the required statements within the prescribed time, the Board shall transmit the petition, a summary record of hearing proceedings, if applicable, its findings of fact, and its recommendation to the Administrator.

§ 1245.115 Action by the Administrator.

(a) After receiving the transmittal from the Board, the Administrator shall determine, in accordance with the policy of § 1245.103, whether or not to grant any petition for waiver of rights to the petitioner.

(b) In the event of denial of the petition by the Administrator, a written notice of such denial will be promptly transmitted by the Board to the petitioner. The written notice will be accompanied with a statement of the grounds for denial.

(c) If the waiver is granted by the Administrator, the petitioner shall be sent for execution, an instrument of waiver confirmatory of the conditions and reservations of the waiver grant. The petitioner shall promptly return the executed copy of the instrument of waiver to the Chairperson.

§ 1245.116 Miscellaneous provisions.

(a) *Filing of patent applications and reimbursement of costs.* In order to protect the interests of the Government and the petitioner in inventions, a petitioner may file United States patent applications for such inventions prior to the Administrator's determination on a petition for waiver. If an application on an identified invention is filed during the pendency of the petition, or within 60 days prior to the receipt of a petition, NASA will reimburse the petitioner for any reasonable costs of the filing and patent prosecution that may have occurred, *provided:*

(1) Similar patent filing and prosecution costs are not normally reimbursed to the petitioner as direct or indirect costs chargeable to the Government contracts;

(2) The petition is ultimately denied with respect to domestic rights, or with respect to foreign and domestic rights, if both are requested, and

(3) Prior to reimbursement, petitioner assigns the application to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration.

(b) *Statement of Government rights.* The waiver recipient shall include, within the specification of any United States patent application and any patent issuing thereon for a waived invention, the following statement:

> The invention described herein was made in the performance of work under NASA Contract No. ______, and is subject to the provisions of Section 305 of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2457).

(c) *License to the Government.* The waiver recipient shall return to NASA a duly executed and approved license to the Government (which will be prepared by the Government) fully confirming of all the rights, domestic and foreign, to which the Government is entitled.

(d) *Patent filing and issuance information.* The waiver recipient shall furnish to either the Chairperson or the patent representative, the filing date, serial number and title, and upon request, a copy of any domestic or foreign patent application including an English language version if filed in a language other than English, and a copy of the patent or patent number and issue date, for any waived invention.

(e) *Transfer of rights.* The waiver recipient shall notify the Chairperson prior to any transfer of principal rights in any waived invention to any party. Such transfer shall be subject to all rights reserved by the Government, and all obligations of the waiver recipient, as set forth in this subpart.

(f) *Utilization reports.* (1) The waiver recipient shall provide to the Chairperson upon request, and no more frequently than annually, reports on the utilization of a waived invention or on efforts at obtaining such utilization being made by the waiver recipient or its licensees or assigns. Such reports shall include information regarding the status of the development, date of first commercial sale or use, and such other data and information as the Chairperson may reasonably specify. No utilization reports need be submitted after the term of the patent.

(2) Such reports on the utilization of a waived invention, as well as information on the utilization or efforts at obtaining utilization obtained as part of a march-in proceeding under § 1245.117, shall be treated by NASA as commercial and financial information obtained from a person and privileged and confidential and not subject to disclosure under 5 U.S.C. 552.

(g) *Communications.* Unless otherwise specifically set forth in this subpart, all communications relating to waived inventions, and all information and documents required to be submitted to NASA in this subpart, shall be furnished to the patent representative designated in the contract under which the waived invention was made.

(Recordkeeping and reporting requirements contained in paragraph (f) were approved by the Office of Management and Budget under control number 2700-0050)

§ 1245.117 March-in and waiver revocation procedures.

(a) The exercise of march-in procedures shall be governed by 35 U.S.C. 203 and by the applicable provisions of 37 CFR 401.6, entitled "Exercise of march-in rights for inventions made by nonprofit organizations and small business firms."

(b) Whenever NASA receives information that it believes might warrant the exercise of march-in rights, before initiating any march-in proceeding, it shall notify the waiver recipient in writing of the information and request informal written or oral comments from the waiver recipient as well as information relevant to the matter. In the absence of any comments from the waiver recipient within 30 days, NASA may, at its discretion, proceed with the procedures set forth in 37 CFR 401.6. If a comment is received within 30 days, or later if NASA has not initiated the procedures, then NASA shall, within 60 days after it receives the comment, either initiate the procedures or notify the waiver recipient, in writing, that it will not pursue march-in rights on the basis of the available information.

(c) If march-in procedures are to be initiated, the Administrator of NASA, or designee, shall undertake or refer the matter for fact finding to the NASA Board of Contract Appeals (BCA) and its Chairperson.

(d) Fact-finding shall be conducted by the NASA BCA and its Chairperson in accordance with its procedures that are consistent with the procedures set forth in 37 CFR 401.6. Any portion of the march-in proceeding, including a fact-finding hearing that involves testimony or evidence relating to the utilization or efforts at obtaining utilization that are being made by the waiver recipient, its assignee, or licensees shall be closed to the public, including potential licensees. In accordance with 35 U.S.C. 202(c)(5), NASA shall not disclose any such information obtained during a march-in proceeding to persons outside the Government except when such release is authorized by the waiver recipient (assignee or licensee).

(e) The preparation of written findings of fact and recommended determination by the Chairperson of the NASA BCA and the determination by the Administrator, or designee, of NASA shall be in accordance with 37 CFR 401.6.

(f) NASA may, at any time, terminate a march-in proceeding if it is satisfied that it does not wish to exercise march-in rights.

§ 1245.118 Record of decisions.

The findings of fact and recommendations made to the Administrator by the Board with respect to each petition for waiver shall be recorded by the Board and be available to the public.

Subpart 2—Licensing of NASA Inventions

AUTHORITY: 35 U.S.C. 207 and 208, 94 Stat. 3023 and 3024.

SOURCE: 46 FR 54328, Nov. 2, 1981, unless otherwise noted.

§ 1245.200 Scope of subpart.

This subpart prescribes the terms, conditions, and procedures upon which a NASA invention may be licensed. It does not affect licenses which (a) were in effect prior to July 1, 1981; (b) may exist at the time of the Government's acquisition of title to the invention, including those resulting from the allocation of rights to inventions made under Government research and development contracts; (c) are the result of an authorized exchange of rights in the settlement of patent disputes; or (d) are otherwise authorized by law or treaty.

§ 1245.201 Policy and objective.

It is the policy and objective of this subpart to use the patent system to promote the utilization of inventions arising from NASA supported research and development.

§ 1245.202 Definitions.

(a) *Federally owned invention* means an invention, plant, or design which is covered by a patent, or patent application in the United States, or a patent, patent application, plant variety protection, or other form of protection, in a foreign country, title to which has been assigned to or otherwise vested in the United States Government.

(b) *Federal agency* means an executive department, military department, Government corporation, or independent establishment, except the Tennessee Valley Authority, which has custody of a Federally owned invention.

(c) *NASA Invention* means a Federally owned invention with respect to which NASA maintains custody and administration, in whole or in part, of the right, title, or interest in such invention on behalf of the United States Government.

(d) *Small business firm* means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of these regulations, the size standard for small business concerns involved in Government procurement, contained in 13 CFR 121.3-8, and in subcontracting, contained in 13 CFR 121.3-12, will be used.

(e) *Practical application* means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are to the extent permitted by law or Government regulations available to the public on reasonable terms.

(f) *United States* means the United States of America, its territories and possessions, the District of Columbia, and the Commonwealth of Puerto Rico.

§ 1245.203 Authority to grant licenses.

NASA inventions shall be made available for licensing as deemed appropriate in the public interest. NASA may grant nonexclusive, partially exclusive, or exclusive licenses thereto under this subpart on inventions in its custody.

Restriction and Conditions

§ 1245.204 All licenses granted under this subpart.

(a) *Restrictions.* (1) A license may be granted only if the applicant has supplied NASA with a satisfactory plan for development or marketing of the invention, or both, and with information about the applicant's capability to fulfill the plan.

(2) A license granting rights to use or sell under a NASA invention in the United States shall normally be granted only to a licensee who agrees that any products embodying the invention or produced through the use of the invention will be manufactured substantially in the United States.

(b) *Conditions.* Licenses shall contain such terms and conditions as NASA determines are appropriate for the protection of the interests of the Federal Government and the public and are not in conflict with law or this subpart. The following terms and conditions apply to any license:

(1) The duration of the license shall be for a period specified in the license agreement, unless sooner terminated in accordance with this subpart.

(2) The license may be granted for all or less than all fields of use of the invention or in specified geographical areas, or both.

(3) The license may extend to subsidiaries of the licensee or other parties if provided for in the license but shall be nonassignable without approval of NASA, except to the successor of that part of the licensee's business to which the invention pertains.

(4) The license may provide the licensee the right to grant sublicenses under the license, subject to the approval of NASA. Each sublicense shall make reference to the license, including the rights retained by the Government, and a copy of such sublicense shall be furnished to NASA.

(5) The license shall require the licensee to carry out the plan for development or marketing of the invention, or both, to bring the invention to practical application within a period specified in the license, and to continue to make the benefits of the invention reasonably accessible to the public.

(6) The license shall require the licensee to report periodically on the utilization or efforts at obtaining utilization that are being made by the licensee, with particular reference to the plan submitted.

(7) All licenses shall normally require royalties or other consideration.

(8) Where an agreement is obtained pursuant to § 1245.204(a)(2) that any products embodying the invention or produced through use of the invention will be manufactured substantially in the United States, the license shall recite such agreement.

(9) The license shall provide for the right of NASA to terminate the license, in whole or in part, if:

(i) NASA determines that the licensee is not executing the plan submitted with its request for a license and the licensee cannot otherwise demonstrate to the satisfaction of NASA that it has taken or can be expected to take within a reasonable time effective steps to achieve practical application of the invention;

(ii) NASA determines that such action is necessary to meet requirements for public use specified by Federal regulations issued after the date of the license and such requirements are not reasonably satisfied by the licensee;

(iii) The licensee has willfully made a false statement of or willfully omitted a material fact in the license application or in any report required by the license agreement; or

(iv) The licensee commits a substantial breach of a covenant or agreement contained in the license.

(10) The license may be modified or terminated, consistent with this subpart, upon mutual agreement of NASA and the licensee.

(11) Nothing relating to the grant of a license, nor the grant itself, shall be construed to confer upon any person any immunity from or defenses under the antitrust laws or from a charge of patent misuse, and the acquisition and use of rights pursuant to this subpart shall not be immunized from the operation of state or Federal law by reason of the source of the grant.

TYPES OF LICENSES

§ 1245.205 Nonexclusive licenses.

(a) *Availability of licenses.* Nonexclusive licenses may be granted under NASA inventions without publication of availability or notice of a prospective license.

(b) *Conditions.* In addition to the provisions of § 1245.204, the nonexclusive license may also provide that, after termination of a period specified in the license agreement, NASA may restrict the license to the fields of use or geographic areas, or both, in which the licensee has brought the invention to practical application and continues to make the benefits of the invention reasonably accessible to the public. However, such restriction shall be made only in order to grant an exclusive or partially exclusive license in accordance with this subpart.

§ 1245.206 Exclusive and partially exclusive licenses.

(a) *Domestic licenses*—(1) *Availability of licenses.* Exclusive or partially exclusive licenses may be granted on NASA inventions:

(i) 3 months after notice of the invention's availability has been announced in the FEDERAL REGISTER; or

(ii) Without such notice where NASA determines that expeditious granting of such a license will best serve the interests of the Federal Government and the public; and

(iii) In either situation, specified in (a)(1)(i) or (ii) of this section only if:

(A) Notice of a prospective license, identifying the invention and the prospective licensee, has been published in the FEDERAL REGISTER, providing opportunity for filing written objections within a 60-day period;

(B) After expiration of the period in § 1245.206(a)(1)(iii)(A) and consideration of nay written objections received during the period, NASA has determined that:

(*1*) The interests of the Federal Government and the public will best be served by the proposed license, in view of the applicant's intentions, plans, and ability to bring the invention to practical application or otherwise promote the invention's utilization by the public;

(*2*) The desired practial application has not been achieved, or is not likely expeditiously to be achieved, under any nonexclusive license which has been granted, or which may be granted, on the invention;

(*3*) Exclusive or partially exclusive licensing is a reasonable and necessary incentive to call forth the investment of risk capital and expenditures to bring the invention to practical application or otherwise promote the invention's utilization by the public; and

(*4*) The proposed terms and scope of exclusivity are not greater than reasonably necessary to provide the incentive for bringing the invention to practical application or otherwise promote the invention's utilization by the public;

(C) NASA has not determined that the grant of such license will tend substantially to lessen competition or result in undue concentration in any section of the country in any line of commerce to which the technology to be licensed relates, or to create or maintain other situations inconsistent with the antitrust laws; and

(D) NASA has given first preference to any small business firms submitting plans that are determined by the agency to be within the capabilities of the firms and as equally likely, if executed, to bring the invention to practical application as any plans submitted by applicants that are not small business firms.

(2) *Conditions.* In addition to the provisions of § 1245.204, the following terms and conditions apply to domestic exclusive and partially exclusive licenses:

(i) The license shall be subject to the irrevocable, royalty-free right of the Government of the United States to practice and have practiced the invention on behalf of the United States and on behalf of any foreign government or international organization pursuant to any existing or future treaty or agreement with the United States.

(ii) The license shall reserve to NASA the right to require the licensee to grant sublicenses to responsible applicants, on reasonable terms, when necessary to fulfill health or safety needs.

(iii) The license shall be subject to any licenses in force at the time of the grant of the exclusive or partially exclusive license.

(iv) The license may grant the licensee the right of enforcement of the licensed patent pursuant to the provisions of Chapter 29 of Title 35, U.S. Code, or other statutes, as determined appropriate in the public interest.

(b) *Foreign licenses*—(1) *Availability of licenses.* Exclusive or partially exclusive licenses may be granted on a NASA invention covered by a foreign patent, patent application, or other form of protection, provided that:

(i) Notice of a prospective license, identifying the invention and prospective licensee, has been published in the FEDERAL REGISTER, providing opportunity for filing written objections within a 60-day period and following consideration of such objections;

(ii) NASA has considered whether the interests of the Federal Government or United States industry in foreign commerce will be enhanced; and

(iii) NASA has not determined that the grant of such license will tend substantially to lessen competition or result in undue concentration in any section of the United States in any line of commerce to which the technology to be licensed relates, or to create or maintain other situations inconsistent with antitrust laws.

(2) *Conditions.* In addition to the provisions of § 1245.204, the following terms and conditions apply to foreign exclusive and partially exclusive licenses:

(i) The license shall be subject to the irrevocable, royalty-free right of the Government of the United States to practice and have practiced the invention on behalf of the United States and on behalf of any foreign government or international organization pursuant to any existing or future treaty or agreement with the United States.

(ii) The license shall be subject to any licenses in force at the time of the grant of the exclusive or partially exclusive license.

(iii) The license may grant the licensee the right to take any suitable and necessary actions to protect the licensed property, on behalf of the Federal Government.

(c) *Record of determinations.* NASA shall maintain a record of determinations to grant exclusive or partially exclusive licenses.

PROCEDURES

§ 1245.207 Application for a license.

An application for a license should be addressed to the Patent Counsel at the NASA installation having responsibility for the invention and shall normally include:

(a) Identification of the invention for which the license is desired, including the patent application serial number or patent number, title, and date, if known;

(b) Identification of the type of license for which the application is submitted;

(c) Name and address of the person, company, or organization applying for the license and the citizenship or place of incorporation of the applicant;

(d) Name, address, and telephone number of representative of applicant to whom correspondence should be sent;

(e) Nature and type of applicant's business, identifying products or services which the applicant has successfully commercialized, and approximate number of applicant's employees;

(f) Source of information concerning the availability of a license on the invention;

(g) A statement indicating whether applicant is a small business firm as defined in § 1245.202(c);

(h) A detailed description of applicant's plan for development or marketing of the invention, or both, which should include:

(1) A statement of the time, nature and amount of anticipated investment of capital and other resources which applicant believes will be required to bring the invention to practical application;

(2) A statement as to applicant's capability and intention to fulfill the plan, including information regarding manufacturing, marketing, financial, and technical resources;

(3) A statement of the fields of use for which applicant intends to practice the invention; and

(4) A statement of the geographic areas in which applicant intends to manufacture any products embodying the invention and geographic areas where applicant intends to use or sell the invention, or both;

(i) Identification of licenses previously granted to applicant under Federally owned inventions;

(j) A statement containing applicant's best knowledge of the extent to which the invention is being practiced by private industry or Government, or both, or is otherwise available commercially; and

(k) Any other information which applicant believes will support a determination to grant the license to applicant.

§ 1245.208 Processing applications.

(a) Applications for licenses will be initially reviewed by the Patent Counsel of the NASA installation having responsibility for the invention. The Patent Counsel shall make a preliminary recommendation to the Director of Licensing, NASA Headquarters, whether to:

(1) Grant the license as requested,

(2) Grant the license with modification after negotiation with the licensee, or

(3) Deny the license.

The Director of Licensing shall review the preliminary recommendation of the Patent Counsel and make a final recommendation to the NASA Associate General Counsel (Intellectual Property). Such review and final recommendation may include, and be based on, any additional information obtained from applicant and other sources that the Patent Counsel and the Director of Licensing deem relevant to the license requested. The determination to grant or deny the license shall be made by the Associate General Counsel (Intellectual Property) based on the final recommendation of the Director of Licensing.

(b) When notice of a prospective exclusive or partially exclusive license is published in the FEDERAL REGISTER in accordance with § 1245-206(a)(1)(iii)(A) or § 1245-206(b)(1)(i), any written objections received in response thereto will be considered by the Director of Licensing in making the final recommendation to the Associate General Counsel (Intellectual Property).

(c) If the requested license, including any negotiated modifications, is denied by the Associate General Counsel (Intellectual Property), the applicant may request reconsideration by filing a written request for reconsideration within 30 days after receiving notice of denial. This 30-day period may be extended for good cause.

(d) In addition to, or in lieu of requesting reconsideration, the applicant may also appeal the denial of the license in accordance with § 1245.211.

[55 FR 51276, Dec. 13, 1990]

§ 1245.209 Notice to Attorney General.

A copy of the notice provided for in §§ 1245.206(a)(1)(iii)(A), and 1245.206(b)(1)(i) will be sent to the Attorney General.

§ 1245.210 Modification and termination of licenses.

Before modifying or terminating a license, other than by mutual agreement, NASA shall furnish the licensee and any sublicensee of record a written notice of intention to modify or terminate the license, and the licensee and any sublicensee shall be allowed 30 days after such notice to remedy any breach of the license or show cause why the license should not be modified or terminated.

§ 1245.211 Appeals.

(a) The following parties may appeal to the NASA Administrator or designee any decision or determination concerning the grant, denial, interpretation, modification, or termination of a license:

(1) A person whose application for a license has been denied;

(2) A licensee whose license has been modified or terminated, in whole or in part; or

(3) A person who timely filed a written objection in response to the notice required by §§ 1245.206(a)(1)(iii)(A) or 1245.206(b)(1)(i) and who can demonstrate to the satisfaction of NASA that

such person may be damaged by the Agency action.

(b) Written notice of appeal must be filed within 30 days (or such other time as may be authorized for good cause shown) after receiving notice of the adverse decision or determination; including, an adverse decision following the request for reconsideration under § 1245.208(c). The notice of appeal, along with all supporting documentation should be addressed to the Administrator, National Aeronautics and Space Administration, Washington, DC 20546. Should the appeal raise a genuine dispute over material facts, fact-finding will be conducted by the NASA Inventions and Contributions Board. The person filing the appeal shall be afforded an opportunity to be heard and to offer evidence in support of the appeal. The Chairperson of the Inventions and Contributions Board shall prepare written findings of fact and transmit them to the Administrator or designee. The decision on the appeal shall be made by the NASA Administrator or designee. There is no further right of administrative appeal from the decision of the Administrator or designee.

§ 1245.212 Protection and administration of inventions.

NASA may take any suitable and necessary steps to protect and administer rights to NASA inventions, either directly or through contract.

§ 1245.213 Transfer of custody.

NASA having custody of certain Federally owned inventions may transfer custody and administration in whole or in part, to another Federal agency, of the right, title, or interest in any such invention.

§ 1245.214 Confidentiality of information.

Title 35, U.S. Code, section 209, provides that any plan submitted pursuant to § 1245.207(h) and any report required by § 1245.204(b)(6) may be treated by NASA as commercial and financial information obtained from a person and privileged and confidential and not subject to disclosure under 5 U.S.C. 552.

Subpart 3—NASA Foreign Patent Program

Authority: 42 U.S.C. 2457(h) and Executive Orders 9865 and 10096.

Source: 30 FR 1844, Feb. 10, 1965, unless otherwise noted.

§ 1245.300 Scope of subpart.

This subpart establishes policy, criteria, and procedures concerning the NASA Foreign Patent Program.

§ 1245.301 Inventions under NASA contracts.

(a) Pursuant to § 1245.113, NASA has facilitated the filing of foreign patent applications by contractors by providing for the granting of a waiver of title to a contractor to any identified invention in countries other than the United States in the event the Administrator of NASA does not desire to file a patent application covering the invention in such countries. However, any such waiver is subject to the reservation by the Administrator of the license required to be retained by NASA under section 305(f) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457(f)).

(b) Conversely, where the principal rights in an invention made under a NASA contract remain in the contractor by virtue of waiver, § 1245.19(a)(5) provides that the contractor, upon written request, will convey to the Administrator of NASA the entire right, title, and interest in the invention in any foreign country in which the contractor has elected not to file a patent application.

(c) With respect to inventions in which NASA has acquired and retained the principal rights, NASA will file patent applications in countries other than the United States on inventions selected in accordance with the criteria set forth in § 1245.303.

§ 1245.302 Inventions by NASA employees.

(a) The foreign rights of NASA and of the NASA employee making an invention are determinable in accordance with Executive Orders 9865 and 10096 and Government Patent Board Administrative Order No. 6 issued pursuant thereto.

(b) Where NASA acquires an assignment of the domestic rights in an invention made by a NASA employee, NASA will also obtain an option to acquire the foreign rights, including the right to file foreign patent applications on the invention.

(c) Where NASA is entitled to only a governmental license in the invention, the principal foreign rights in the invention are retained by the employee unless he agrees in writing to assign such rights to NASA.

§ 1245.303 Criteria.

The following categories of inventions will be considered for the filing of patent applications by NASA in countries other than the United States:

(a) Inventions which may be utilized abroad in governmental programs of the United States.

(b) Inventions which may be exploited abroad in the public interest by license to U.S. nationals or others.

(c) Inventions which may be utilized in applications type satellites, such as communications and meteorological satellites.

(d) Inventions considered to be basic discoveries or of major significance in an art.

(e) Inventions in fields which directly concern the public health or public welfare.

§ 1245.304 Procedures.

(a) The patent counsel at each NASA field installation will review all invention disclosures at the time of docketing and will expedite the processing and preparation of a U.S. patent application, if justified, on those inventions which appear to fall within the criteria set forth in § 1245.303. The patent counsel will make a recommendation as to whether or not foreign patent coverage appears justified at the time of assigning a priority evaluation to a disclosed invention.

(b) Preparation and filing of patent applications in foreign countries will be subject to approval of the Assistant General Counsel for Patent Matters, NASA Headquarters.

(c) The Office of Assistant General Counsel for Patent Matters will budget for and administer the filing of all patent applications in countries other than the United States.

(d) Coordination with other interested NASA offices will be undertaken by the Assistant General Counsel for Patent Matters.

Subpart 4—Foreign Patent Licensing Regulations

AUTHORITY: 42 U.S.C. 2457(g) and (h).

SOURCE: 31 FR 10958, Aug. 18, 1966, unless otherwise noted.

§ 1245.400 Scope of subpart.

(a) The subpart establishes the policy, terms, conditions, and procedures under which NASA-owned foreign patents and patent applications may be licensed.

(b) The provisions of this subpart apply to all NASA-owned patents granted in countries other than the United States and to NASA-owned patent applications pending in such countries and supplement the provisions of Subpart 2 of this part for foreign patent licensing.

§ 1245.401 Policy.

The foreign licensing program of the National Aeronautics and Space Administration serves to promote and utilize foreign patent rights vested in the Administration. The objectives of this program are to further the interests of United States industry in foreign commerce, to enhance the economic interests of the United States and to advance the international relationships of the United States.

§ 1245.402 Types of licenses and terms and conditions.

Licenses will be individually negotiated and may be granted to any applicant, foreign or domestic, on a nonexclusive or exclusive basis for royalties or other considerations and on such other terms and conditions as are deemed appropriate to the interests of the United States. Preference in the granting of foreign license rights will be shown to those applicants who have previously been granted a license under the corresponding U.S. patent or patent application.

§ 1245.403 Government license.

There will be reserved from each exclusive license an irrevocable, nonexclusive, nontransferable, royalty-free license for the practice of such invention throughout the world by or on behalf of the United States or any foreign government pursuant to any existing or future treaty or agreement with the United States.

§ 1245.404 Enforcement of patent rights.

An exclusive licensee will be authorized to enforce the licensed patent and to sue infringers of the patent at its own expense.

§ 1245.405 Procedures.

(a) NASA will publish in the United States, and elsewhere as may be appropriate, lists of NASA-owned foreign patents or patent applications available for licensing.

(b) NASA will also furnish written notice of the availability for licensing of NASA-owned foreign patents or patent applications to any licensee under the corresponding U.S. patent or patent application.

(c) Applications for license should be addressed to the Administrator, National Aeronautics and Space Administration, Washington, D.C. 20456. The application must fully identify the patent or patent application, and state the type of license requested together with proposed terms and conditions thereof.

(d) The conduct of negotiations with prospective licensees will be the responsibility of the General Counsel, NASA. In the conduct of such negotiations, due regard shall be had for the possible interests of NASA program and staff offices, and their coordination will be obtained as deemed appropriate.

(e) NASA will publish notice in the FEDERAL REGISTER, and elsewhere as may be appropriate, of its intention to grant an exclusive license under an identified patent or patent application. An exclusive license will not be granted until the expiration of 60 days from the date of notice in order to provide a suitable time interval for interested persons or other Government agencies to interpose comment or objection.

(f) All licenses shall become effective upon the written acceptance by the licensee of a license instrument specifying the type of license and terms and conditions thereof.

Subpart 5—Authority and Delegations to Take Certain Actions Relating to Patents and Other Intellectual Property Rights

AUTHORITY: 42 U.S.C. 2473, 2457; 14 CFR 1204.506.

SOURCE: 43 FR 34122, Aug. 3, 1978, unless otherwise noted.

§ 1245.500 Scope.

This Subpart 5 sets forth the authority and delegations relating to intellectual property rights, and the administration of the NASA patent program.

§ 1245.501 General Counsel.

The General Counsel administers the NASA patent program and is delegated authority to take the following specific actions related to intellectual property, including patent, copyright, trademark, and related matters:

(a) *Determination of rights.* (1) To execute notifications of the Administrator's determinations made pursuant to section 305(a) of the National Aeronautics and Space Act of 1958, as amended;

(2) To make determinations, under Executive Order 10096 of January 23, 1950, as amended, of the respective rights of the Government and of the inventor in and to inventions made by employees under the adminstrative jurisdiction of the National Aeronautics and Space Administration, and to appoint a liaison officer to deal with the Commissioner of Patents in such matters pursuant to 37 CFR 100.10, "Administration of a Uniform Patent Policy With Respect to the Domestic Rights in Inventions Made by Government Employees";

(b) *Powers of attorney.* To appoint and/or revoke principal attorneys and to execute necessary powers of attorney for the purpose of filing and prosecuting patent applications in which the United States, as represented by the Administrator, has an interest by way of either title or license;

(c) *Application papers and statements.* To receive patent applications, documents, and statements transmitted to the Administrator pursuant to section 305(c) of the National Aeronautics and Space Act of 1958, as amended;

(d) *Acceptance of licenses and assignments.* To accept on behalf of the United States licenses under, assignments of, and other rights in inventions, patents, and applications for patents;

(e) *Secrecy orders.* To exercise all powers of the Administrator with respect to secrecy orders in patent cases and foreign filing under 35 U.S.C. 181 et seq.;

(f) *Certifications.* To exercise the authority of the Administrator with respect to certifications in support of requests for extensions of time under 35 U.S.C. 267;

(g) *Foreign patent program.* To exercise the authority of the Administrator in taking all necessary action to obtain and maintain patents in foreign countries, including the execution of instruments necessary for filing, prosecution, and maintenance of foreign applications and patents;

(h) *Authority under section 305 (d) and (e).* To represent the Administrator and to appoint attorneys to represent the Administrator in the conduct of business under sections 305 (d) and (e) of the National Aeronautics and Space Act of 1958, as amended, including execution of requests pursuant to said sections of the act that patents be issued to the Administrator on behalf of the United States or that title be transferred to the Administrator;

(i) *Acquisition authority.* To exercise the power conferred on the Administrator by the National Aeronautics and Space Act of 1958, as amended, to acquire an interest in patents and patent applications, including the purchase of such interests in settlement of claims for the unauthorized use of patented inventions and to acquire interests in copyrights, trademarks, and trade names;

(j) *Authority to settle copyright claims.* To exercise all powers conferred on the Administrator by 28 U.S.C. 1498(b), including the settlement of claims for copyright infringement;

(k) *Granting of licenses.* To make the determinations and to take any and all actions with respect to the licensing of NASA inventions vested in the Administrator by the NASA Domestic Patent Licensing Regulations, 14 CFR Subpart 1245.2 (NASA Management Instruction 5109.3) and the NASA Foreign Patent Licensing Regulations, 14 CFR Subpart 1245.4 (NASA Management Instruction 5109.5) to sign all FEDERAL REGISTER notice material required by the patent licensing regulations and to otherwise grant licenses on any invention in which the Administrator has reserved the right to grant licenses; and

(l) *Waiver determinations and instruments.* To sign for the Administrator attestations of determinations of grant or denial of waiver of title to inventions and to execute instruments of waiver, when in accordance with the recommendations of the Inventions and Contributions Board, and the NASA Patent Waiver Regulations, 14 CFR Subpart 1245.1 (NASA Management Instruction 5109.2).

§ 1245.502 Assistant General Counsel for Patent Matters.

The Assistant General Counsel for Patent Matters provides functional direction to all Patent Counsel and is redelegated the authority to take the following actions:

(a) *Rights determinations.* (1) To execute notifications of the Administrator's determinations made pursuant to section 305(a) of the National Aeronautics and Space Act of 1958, as amended;

(2) To make determinations, under Executive Order 10096 of January 23, 1950 as amended, of the respective rights of the Government and of the inventor in and to inventions made by employees under the administrative jurisdiction of the National Aeronautics and Space Administration, and to appoint a liaison officer to deal with the Commissioner of Patents in such matters pursuant to 37 CFR 100.10, "Administration of a Uniform Patent Policy With Respect to the Domestic

Rights in Inventions Made by Government Employees";

(b) *Powers of attorney.* To appoint and/or revoke principal attorneys and to execute necessary powers of attorney for the purpose of filing and prosecuting patent applications in which the United States, as represented by the Administrator, has an interest by way either of title or license;

(c) *Application papers and statements.* To receive patent applications, documents, and statements transmitted to the Administrator pursuant to section 305(c) of the National Aeronautics and Space Act of 1958, as amended;

(d) *Acceptance of licenses and assignments.* To accept, on behalf of the United States, licenses under, assignments of, and other rights in inventions, patents, and applications for patents; and

(e) *Secrecy orders.* To exercise all powers of the Administrator with respect to secrecy orders in patent cases and foreign filing under 35 U.S.C. 181 et seq.

§ 1245.503 Patent Counsel of Field Installations.

Patent Counsel of Field Installations and Patent Counsel, NASA Resident Legal Office, Pasadena, Calif., are redelegated authority to take the following actions:

(a) *Rights determinations.* To make determinations, under Executive Order 10096 of January 23, 1950, as amended, of the respective rights of the Government and of the inventor in and to inventions made by employees under the administrative jurisdiction of their installations in those instances where the Government is entitled to obtain the entire right, title, and interest, and to make such determinations, with the concurrence of the Assistant General Counsel for Patent Matters, in those instances where the Government acquires less than the entire domestic right, title and interest.

(b) *Acceptance of licenses and assignments.* To accept on behalf of the United States licenses under, assignments of and other rights in inventions, patents, and applications for patents.

§ 1245.504 Further redelegation.

None authorized except by virtue of succession.

PART 1250—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF NASA—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Sec.

1250.100 Purpose.
1250.101 Applicability.
1250.102 Definitions.
1250.103 Discrimination prohibited.
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APPENDIX A TO PART 1250—NASA FEDERAL FINANCIAL ASSISTANCE TO WHICH THIS PART APPLIES

AUTHORITY: Sec. 602, 78 Stat. 252, 42 U.S.C. 2000d-1; and the laws listed in Appendix A to this part.

SOURCE: 30 FR 301, Jan. 9, 1965, unless otherwise noted.

§ 1250.100 Purpose.

The purpose of this part is to effectuate the provisions of Title VI of the Civil Rights Act of 1964 (hereafter referred to as "the Act") to the end that no person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the National Aeronautics and Space Administration, hereinafter referred to as NASA.

§ 1250.101 Applicability.

(a) *Covered programs.* (1) This part applies to any program for which Federal financial assistance is authorized under a law administered by NASA, including the federally-assisted programs and activities listed in Appendix A to this part. The fact that a program or activity is not listed in Appendix A shall not mean, if Title VI of the Act is otherwise applicable, that such program is not covered. Other programs under statutes now in force or hereafter enacted may be added to Appendix A by notice published in the FEDERAL REGISTER.

(2) This part applies to money paid, property transferred, or other Federal financial assistance extended under any such program after the effective date of this part pursuant to an application approved prior to such effective date.

(b) *Excluded activities.* This part does not apply to (1) any Federal financial assistance by way of insurance or guaranty contracts, (2) money paid, property transferred, or other assistance extended under any such program before the effective date of this part, except as provided in paragraph (a) of this section, (3) any assistance to any individual who is the ultimate beneficiary under any such program, (4) any employment practice, under any such program, of any employer, employment agency, or labor organization, except as provided in § 1250.103-3, (5) contracts not covered in the programs listed in Appendix A, or (6) advances, V-loans, and other financial assistance made incident to NASA procurements not covered in the programs listed in Appendix A.

§ 1250.102 Definitions.

As used in this part—

(a) *Administrator* means the Administrator of the NASA.

(b) *Applicable* means one who submits an application, request, proposal, or plan required to be approved by a responsible NASA official, or by a primary recipient, as a condition to eligibility for Federal financial assistance; and the term *application* means such an application, request, proposal or plan.

(c) *Facility* includes all or any portion of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.

(d) *Federal financial assistance* includes (1) grants and loans of Federal funds, (2) the grant or donation of Federal property and interests in property, (3) the detail of Federal personnel, (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(e) *NASA* means the National Aeronautics and Space Administration.

(f) *Primary recipient* means any recipient which is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

(g) *Principal Compliance Officer* means the Director, Equal Employment Opportunity Office, Office of Organization and Management, NASA Headquarters, or any successor officer to whom the Administrator should delegate authority to perform the functions assigned to the Principal Compliance Officer by this part.

(h) *Program* includes any program, project, or activity for the provision of services, financial aid, or other benefits to individuals (including education or training) whether provided through employees of the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient, and including work opportunities and cash or loan or other assistance to individuals, or for the provision of facilities for furnishing services, financial aid or other benefits to individuals. The services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any services, financial aid, or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include any services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

(i) *Recipient* means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

(j) *Responsible NASA official* means:

(1) The heads of Offices at NASA Headquarters responsible for making grants, and contracts of the kind listed in Appendix A; and

(2) Each Director of a field installation which makes or administers grants and contracts of the kind listed in Appendix A, or any officer to whom he has delegated authority to act within the areas of responsibility assigned to him under this part.

(k) *United States* means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States, and the term *State* means any one of the foregoing.

[30 FR 301, Jan. 9, 1965, as amended at 38 FR 17936, July 5, 1973]

§ 1250.103 Discrimination prohibited.

§ 1250.103-1 General.

No person in the United States shall, on the ground of race, color or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this part applies.

§ 1250.103-2 Specific discriminatory acts prohibited.

(a) A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on ground of race, color, or national origin:

(1) Deny an individual any service, financial aid, or other benefit provided under the program;

(2) Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(3) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program to which this regulation applies, on the grounds of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this regulation.

(4) Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(5) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(6) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(7) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program (including the opportunity to participate in the program as an em-

ployee but only to the extent set forth in § 1250.103-3).

(b) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.

(c) As used in this section the services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.

(d) A recipient may not take action that is calculated to bring about indirectly what this part forbids it to accomplish directly.

(e) The enumeration of specific forms of prohibited discrimination in this section does not limit the generality of the prohibition in § 1250.103-1. This regulation does not prohibit the consideration of race, color, or national origin if the purpose and effect are to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participation in, the program or activity receiving Federal financial assistance, on the grounds of race, color, or national origin. Where previous discriminatory practices or usage tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this regulation applies the applicant or recipient has an obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage, and to accomplish the purpose of the Act.

[30 FR 301, Jan. 9, 1965, as amended at 38 FR 17936, July 5, 1973]

§ 1250.103-3 Employment practices.

(a) Where a primary objective of the Federal financial assistance to a program to which this part applies is to provide employment, a recipient may not directly or through contractual or other arrangements subject an individual to discrimination on the ground of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, employment, layoff or termination, upgrading, demotion, or transfer, rates of pay or other forms of compensation, and use of facilities), including programs where a primary objective of the Federal financial assistance is (1) to assist such individuals through employment to meet expenses incident to the commencement or continuation of their education or training, or (2) to provide work experience which contributes to the education or training of such individuals.

(b) Employment opportunities provided in connection with any of the programs listed in Appendix A, which opportunities are limited, or for which preference is given, to students, fellows, or other persons in training for the same or related employments, are programs of the kind described in paragraph (a) (1) and (2) of this section.

(c) The requirements applicable to construction employment under any such program shall be those specified in or pursuant to Executive Order 11246 or any Executive order which supersedes it.

(d) Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the grounds of race, color, or national origin in the employment practices of the recipient or other persons subject to the regulation tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this regulation applies, the provisions of paragraph (a) of this section shall apply to the employment practices of the recipient or other persons subject to the regulation, to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries.

[30 FR 301, Jan. 9, 1965, as amended at 38 FR 17936, July 5, 1973]

§ 1250.103-4 Illustrative applications.

(a) In training grant programs discrimination is forbidden in the selection or eligibility of individuals to be trained and in their treatment by the grantee during their training. In any case where selection is made from a predetermined group, such as the students in an institution, the group must have been selected without discrimination.

(b) In a research or training grant to a university for activities to be conducted in a graduate school, discrimination in the admission and treatment of students in the graduate school is prohibited and the prohibition extends to the entire university unless it satisfies the responsible NASA official that practices with respect to other parts or programs of the university will not interfere, directly or indirectly, with fulfillment of the assurance required with respect to the graduate school.

(c) Discrimination in the treatment of students or other trainees includes the prohibition of discrimination among the students or trainees in the availability or use of any academic, dormitory, eating, recreational, or other facilities of the grantee or other recipient.

(d) In a research or training grant, discrimination is prohibited with respect to the availability of any educational activity and any provision of medical or other services and any financial aid to individuals incident to the grant.

(e) Upon transfers of real or personal property for research or educational uses, discrimination is forbidden to the same extent as in the case of grants for the construction of facilities or the provision of equipment for like purposes.

(f) In some situations even though past discriminatory practices have been abandoned, the consequences of such practices continue to impede the full availability of a benefit. If the efforts required of the applicant or recipient under § 1250.105 to provide information as to the availability of the program or activity, and the rights of beneficiaries under this regulation, have failed to overcome these consequences, it will become necessary for such applicant or recipient to take additional steps to make the benefits fully available to racial and nationality groups previously subjected to discrimination. This action might take the form, for example, of special arrangements for obtaining referrals or making selections which will insure that groups previously subjected to discrimination are adequately served.

(g) Even though an applicant or recipient has never used discriminatory policies, the services and benefits of the program or activity it administers may not in fact be equally available to some racial or nationality groups. In such circumstances an applicant or recipient may properly give special consideration to race, color, or national origin to make the benefits of its program more widely available to such groups, not then being adequately served. For example, where a university is not adequately serving members of a particular racial or nationality group, it may establish special recruitment policies to make its program better known and more readily available to such group, and take other steps to provide that group with more adequate service.

[30 FR 301, Jan. 9, 1965, as amended at 38 FR 17937, July 5, 1973]

§ 1250.103-5 Special programs.

An individual shall not be deemed subjected to discrimination by reason of his exclusion from the benefits of a program limited by Federal law to individuals of a particular race, color, or national origin different from his.

§ 1250.103-6 Medical emergencies.

Notwithstanding the provisions of §§ 1250.103 to 1250.103-5, a recipient of Federal financial assistance shall not be deemed to have failed to comply with § 1250.103-1, if immediate provision of a service or other benefit to an individual is necessary to prevent his death or serious impairment of his health, and such service or other benefit cannot be provided except by or through a medical institution which refuses or fails to comply with § 1250.103-1.

§ 1250.104 Assurances.

(a) *General requirement.* Every application for Federal financial assistance to carry out a program to which this part applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain, be accompanied by, or identify and make reference to, an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part. If the assurance is not made a part of the application, the application shall identify the assurance which is applicable to the application. One assurance shall suffice for all applications of an applicant if the assurance complies with the conditions made applicable by this part to each such application for Federal financial assistance. Every assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(b) *Duration of assurances.* The period of time to be covered by the assurances required under this § 1250.104 shall be as follows:

(1) *Real property.* In the case of an application for Federal financial assistance for providing real property or structures thereon, the assurance shall obligate the recipient, or in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) *Personal property.* In the case of an application for Federal financial assistance for providing personal property, the assurance shall obligate the recipient for the period during which he retains ownership or possession of the property.

(3) *Other kinds of Federal financial assistance.* In the case of an application for any other kind of Federal financial assistance, the assurance shall obligate the recipient for the period during which Federal financial assistance is extended pursuant to the application.

(c) *Assurances for research, training, or educational programs.* (1) In the case of application by an institution of higher education or any other organization for Federal financial assistance for a program or activity which involves participation by students, fellows or trainees, including but not limited to assistance for research, training, or the provision of facilities, the assurance required by this § 1250.104 shall extend to admission practices and to all other practices relating to the treatment of students or other participants.

(2) The assurances from such an applicant shall be applicable to the entire organization of the applicant unless the applicant establishes, to the satisfaction of the officer administering the program or activity involved, that its practices in designated parts or programs of the organization of the applicant will in no way affect its practices in the program of the applicant for which Federal financial assistance is sought, or the beneficiaries of or participants in such program.

(d) *Assurances for construction of facilities.* (1) In the case of assistance for the construction of a facility, or part thereof, the assurance shall extend to the entire facility and to facilities operated in connection therewith. In grants to assist in the construction of facilities for the provision of research, training, or educational services, assurances will be required that services will be provided without discrimination, to the same extent that discrimination would be forbidden as a condition of grants for the support of such services. Thus, as a condition of grants for the construction of academic, research or other facilities at institutions of higher education, assurances will be required that there will be no discrimination in the admission or treatment of students. Also, see paragraph (c) of this section for the requirement as to the applicability of the assurance to the applicant's organization.

(2) In other construction grants the assurances required will similarly be adapted to the nature of the activities to be conducted in the facilities for construction of which the grants have been authorized by Congress.

(e) *Instrument effecting or recording transfers of real property.* The instrument effecting or recording the transfer, shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where no transfer of property is involved, but property is improved under a program of Federal financial assistance, the recipient shall agree to include such a covenant in any subsequent transfer of such property. Where the property is obtained from the Federal Government, such covenant may also include a condition coupled with a right to be reserved by NASA to revert title to the property in the event of a breach of the covenant where, in the discretion of the responsible NASA official, such a condition and right of reverter is appropriate to the program under which the real property is obtained and to the nature of the grant and the grantee.

(f) *Assurances for transfer of surplus real property.* Transfers of surplus property are subject to regulations issued by the Administrator of General Services (41 CFR 101-6.2).

(g) *Form of assurances.* The responsible NASA officials shall specify the form of assurances required by this § 1250.104 and the extent to which like assurances will be required by subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program.

(h) *Requests for proposals.* Any request for proposals issued by NASA which relates to covered financial assistance listed in Appendix A shall have set forth therein or have attached thereto the assurance prescribed in accordance with paragraph (g) of this section, and shall require that the proposer either include the assurance as a part of his signed proposal or identify and refer to an assurance already signed and submitted by the proposer.

[30 FR 301, Jan. 9, 1965, as amended at 38 FR 17937, July 5, 1973]

§ 1250.105 Compliance information.

(a) *Cooperation and assistance.* Each responsible NASA official shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the Principal Compliance Officer or his designee timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the Principal Compliance Officer or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part.

(c) *Access to sources of information.* Each recipient shall permit access by the Principal Compliance Officer or his designee during normal business hours to such of its books, records, accounts and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person and that agency, institution or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the Principal Compliance Officer finds necessary to apprise such persons of the protection against discrimination assured them by the Act and this part.

§ 1250.106 Conduct of investigations.

(a) *Periodic compliance reviews.* The responsible NASA official or his designee shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this part may by himself or by a representative file with the Principal Compliance Officer or his designee a written complaint. A complaint must be filed not later than 90 days from the date of the alleged discrimination, unless the time for filing is extended by the Principal Compliance Officer or his designee.

(c) *Investigations.* The Principal Compliance Officer or his designee will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, the Principal Compliance Officer or his designee will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 1250.107.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section, the responsible NASA official or his designee will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

§ 1250.107 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to, (1) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceeding under State or local law.

(b) *Noncompliance with § 1250.104.* If an applicant fails or refuses to furnish an assurance required under § 1250.104 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. NASA shall not be obligated to provide assistance in such a case during the pendency of the administrative proceedings under such subsection except that NASA shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application therefor approved prior to the effective date of this part.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating or refusing to grant or continue Federal financial assistance shall become effective until (1) the responsible NASA official has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means, (2) there has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part, (3) the action has been approved by the Administrator pursuant to § 1250.109(e), and (4) the expiration of 30 days after the Administrator has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until (1) the Principal Compliance Officer has determined that compliance cannot be secured by voluntary means, (2) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance and (3) the expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days additional efforts shall be made to persuade the recipient or other person to comply with this part and to take such corrective action as may be appropriate.

[30 FR 301, Jan. 9, 1965, as amended at 38 FR 17937, July 5, 1973]

§ 1250.108 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 1250.107(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the Principal Compliance Officer that the matter be scheduled for hearing or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and § 1250.107(c) of this part and consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at NASA Headquarters in Washington, D.C., at a time fixed by the Principal Compliance Officer unless he determines that the convenience of the applicant or recipient or of NASA requires that another place be selected. Hearings shall be held before the Administrator, or, at his discretion, before a hearing examiner designated in conformity with 5 U.S.C. 3105 and 3344 (section 11 of the Administrative Procedure Act).

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and NASA shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554-557 (section 5-8 of the Administrative Procedure Act), and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments, and briefs, requests for findings, and other related matters. Both NASA and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this part with respect to two or more programs to which this part applies, or non-compliance with this part and the regulations of one or more other Federal departments or agencies issued under Title VI of the Act, the Administrator may, by agreement with such other departments or agencies where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedures not inconsistent with the part. Final decisions in such cases, insofar as this part is concerned, shall be made in accordance with § 1250.109.

[30 FR 301, Jan. 9, 1965, as amended at 38 FR 17937, July 5, 1973]

§ 1250.109 Decisions and notices

(a) *Decision by person other than the NASA Principal Compliance Officer.* If the hearing is held by a hearing examiner, such hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the Principal Compliance Officer for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient. Where the initial decision is made by the hearing examiner, the applicant or recipient may, within 30 days of the mailing of such notice of initial decision, file with the Principal Compliance Officer his exceptions to the initial decision with his reasons therefor. In the absence of exceptions, the Principal Compliance Officer may on his own motion, within 45 days after the initial decision, serve on the applicant or recipient a notice that he will review the decision. Upon the filing of such exceptions or of such notice of review the Principal Compliance Officer shall review the initial decision and issue his own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall constitute the final decision of the Principal Compliance Officer.

(b) *Decisions on record or review by the NASA Principal Compliance Officer.* Whenever a record is certified to the Principal Compliance Officer for decision or he reviews the decision of a hearing examiner pursuant to paragraph (a) of this section, or whenever the Administrator conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with him briefs or other written statements of its contentions, and a copy of the final decision of the Principal Compliance Officer shall be given in writing to the applicant or recipient and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 1250.108, a decision shall be made by the Principal Compliance Officer on the record and a copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing officer or the Principal Compliance Officer shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) *Approval by administrator.* Any final decision of the NASA Principal Compliance Officer which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this part or the Act, shall promptly be transmitted to the Administrator, who may approve such decision, may vacate it, or remit or mitigate any sanction imposed.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part including provisions designed to assure that no Federal financial assistance will thereafter be extended under such program to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this part, or to have otherwise failed to comply with this part, unless and until it corrects its non-compliance and satisfies the Principal Compliance Officer that it will fully comply with this part.

(g) *Post termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this regulation and provides reasonable assurance that it will fully comply with this regulation.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the Principal Compliance Officer to restore fully the eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g)(1) of this section. If the Principal Compliance Officer determines that those requirements have been satisfied, he shall restore such eligibility.

(3) If the Principal Compliance Officer denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by the Principal Compliance Officer. The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of paragraph (g)(1) of this section. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

[30 FR 301, Jan. 9, 1965, as amended at 38 FR 17937, July 5, 1973]

§ 1250.110 Judicial review.

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

§ 1250.111 Effect on other regulations forms and instructions.

(a) *Effect on other regulations.* All regulations, orders, or like directions heretofore issued by any officer of NASA which impose requirements designed to prohibit any discrimination against individuals on the ground of race, color, or national origin under any program to which this part applies, and which authorize the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant for or recipient of such assistance under such program for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this part, except that nothing in this part shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to the effective date of this Instruction. Nothing in this part, however, shall be deemed to supersede any of the following (including future amendments thereof): (1) Executive Orders 10925 and 11246 and regulations or instructions issued thereunder, or (2) any other regulations or instructions, insofar as such other regulations or instructions prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this part is inapplicable, or prohibit discrimination on any other ground.

(b) *Forms and instructions.* Each responsible NASA official shall issue and promptly make available to interested persons forms and detailed instructions and procedures for effectuating this part as applied to financial assistance to which this part applies and for which he is responsible.

(c) *Supervision and coordination.* The Administrator may assign to officials of other departments or agencies of the Government, with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of Title VI of the Act and this part (other than responsibility for final decision as provided in § 1250.109), including the achievement of effective coordination and maximum uniformity within NASA and within the Executive Branch of the Government in the application of Title VI and this part to similar programs and in similar situations. Any action taken, determination made, or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this subsection shall have the same effect as though such action has been taken by the responsible official of this agency.

[30 FR 301, Jan. 9, 1965, as amended at 38 FR 17937, July 5, 1973]

§ 1250.112 Relationship with other officials.

NASA officials, in performing the functions assigned to them by this part, are responsible for recognizing the delegations of authority and responsibility of other NASA officials and for seeing the actions taken or instructions issued by them are properly coordinated with the offices and divisions having joint interests.

APPENDIX A TO PART 1250—NASA FEDERAL FINANCIAL ASSISTANCE TO WHICH THIS PART APPLIES

1. Grants made under the authority of Pub. L. 85-934, approved September 6, 1958 (42 U.S.C. 1891-1893).

2. Contracts with nonprofit institutions of higher education or with nonprofit organizations whose primary purpose is the conduct of scientific research, wherein title to equipment purchased with funds under such contracts may be vested in such institutions or organizations under the authority of section 2 of Pub. L. 85-934, approved September 6, 1938 (42 U.S.C. 1892).

3. Training grants made under the authority of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2451-2460, 2472-2473).

4. Facilities grants made under authority in annual NASA authorization and appropriation acts.

[30 FR 301, Jan. 9, 1965, as amended at 38 FR 17936, July 5, 1973]

PART 1251—NONDISCRIMINATION ON BASIS OF HANDICAP

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AUTHORITY: 29 U.S.C. 794.

SOURCE: 51 FR 26862, July 28, 1986, unless otherwise noted.

Subpart 1251.1—General Provisions

§ 1251.100 Purpose.

This part effectuates section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance.

§ 1251.101 Application.

This part applies to each recipient of Federal financial assistance from the National Aeronautics and Space Administration and to each program or activity that receives or benefits from such assistance.

§ 1251.102 Definitions.

As used in this part, the term:

(a) *The Act* means the Rehabilitation Act of 1973, Pub. L. 93-112, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 29 U.S.C. 794.

(b) *Section 504* means section 504 of the Act.

(c) *Assistant Administrator* means the Assistant Administrator for Equal Opportunity Programs for NASA.

(d) *Recipient* means any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

(e) *Applicant for assistance* means one who submits an application, request, or plan required to be approved by a NASA official or by a recipient as a condition to becoming a recipient.

(f) *Federal financial assistance* means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the agency provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel; or

(3) Real and personal property or any interest in or use of such property, including:

(i) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

(g) *Facility* means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

(h) *Handicapped person.*

(1) *Handicapped persons* means any person who:

(i) Has a physical or mental impairment which substantially limits one or more major life activities;

(ii) Has a record of such an impairment; or

(iii) Is regarded as having such an impairment.

(2) As used in paragraph (h)(1) of this section, the phrase:

(i) *Physical or mental impairment* means:

(A) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(B) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term *physical or mental impairment* includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction, and alcoholism.

(ii) *Major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(iii) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(iv) *Is regarded as having an impairment* means:

(A) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation;

(B) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(C) Has none of the impairments defined in this paragraph but is treated by a recipient as having such an impairment.

(i) *Qualified handicapped person* means:

(1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question;

(2) With respect to other services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

(j) *Handicap* means any condition or characteristic that renders a person a handicapped person as defined in paragraph (h) of this section.

§ 1251.103 Discrimination prohibited.

(a) *General.* No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance.

(b) *Discriminatory actions prohibited.* (1) A recipient, in providing any aid, benefits, or services, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program;

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

(2) For purposes of this part, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped persons and nonhandicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.

(3) Recipients shall take appropriate steps to ensure that no handicapped individual is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination in any program receiving or benefiting from Federal financial assistance because of the absence of auxiliary aids for individuals with impaired sensory, manual, or speaking skills.

(4) Despite the existence of separate or different programs or activities provided in accordance with this part, a recipient may not deny a qualified handicapped person the opportunity to participate in such programs or activities that are not separate or different.

(5) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration:

(i) That have the effect of subjecting qualified handicapped persons to discrimination of the basis of handicap;

(ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons; or

(iii) That perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.

(6) In determining the site or location of a facility, an applicant for assistance or a recipient may not make selections:

(i) That have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives or benefits from Federal financial assistance; or

(ii) That have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(7) As used in this section, the aid, benefit, or service provided under a program or activity receiving or benefiting from Federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part, with Federal financial assistance.

(8) Recipients shall take appropriate steps to ensure that communications with their applicants, employees, and beneficiaries are available to persons with impaired vision and hearing.

(c) *Programs limited by Federal law* The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute of Executive order to handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

§ 1251.104 Assurances required.

(a) *Assurances.* An applicant for Federal financial assistance for a program or activity to which this part applies shall submit an assurance, on a form specified by the Assistant Administrator, that the program will be operated in compliance with this part. An applicant may incorporate these assurances by reference in subsequent applications to NASA.

(b) *Duration of obligation.* (1) In the case of Federal financial assistance extended in the form of real property or to provide real property or structures on the property, the assurance will obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for the purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) In the case of Federal financial assistance extended to provide personal property, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases, the assurance will obligate the recipient for the period during which Federal financial assistance is extended.

(c) *Covenants.* (1) Where Federal financial assistance is provided in the form of real property or interest in the property from NASA, the instrument effecting or recording this transfer shall contain a covenant running with the land to assure nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) Where no transfer of property is involved but property is purchased or improved with Federal financial assistance, the recipient shall agree to include the covenant described in paragraph (c)(3) of this section in the instrument effecting or recording any subsequent transfer of the property.

(3) Where Federal financial assistance is provided in the form of real property or interest in the property from NASA, the covenant shall also include a condition coupled with a right to be reserved by NASA to revert title to the property in the event of a breach of the covenant. If a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing facilities on the property for the purposes for which the property was transferred, the Assistant Administrator may, upon request of the transferee and if necessary to accomplish such financing and upon such conditions as he or she deems appropriate, agree to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

§ 1251.105 Remedial action, voluntary action, and self-evaluation.

(a) *Remedial action.* (1) If the Assistant Administrator finds that a recipient has discriminated against persons on the basis of handicap in violation of section 504 or this part, the recipient shall take such remedial action as the Assistant Administrator deems necessary to overcome the effects to the discrimination.

(2) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of section 504 or this part and where another recipient exercises control over the recipient that has discriminated, the Assistant Administrator, where appropriate, may require either or both recipients to take remedial action.

(3) The Assistant Administrator may, where necessary to overcome the effects of discrimination in violation of section 504 or this part, require a recipient to take remedial action:

(i) With respect to handicapped persons who are no longer participants in the recipient's program but who were participants in the program when such discrimination occurred; or

(ii) With respect to handicapped persons who would have been participants in the program had the discrimination not occurred; or

(iii) With respect to handicapped persons presently in the program, but not receiving full benefits or equal and integrated treatment within the program.

(b) *Voluntary action.* A recipient may take steps, in addition to any action that is required by this part, to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified handicapped persons.

(c) *Self-evaluation.* (1) A recipient shall, within 1 year of the effective date of this part; or within 1 year of first becoming a recipient:

(i) Evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices and the effects thereof that do not or may not meet the requirements of this part;

(ii) Modify, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, any policies and practices that do not meet the requirements of this part; and

(iii) Take, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.

(2) A recipient that employs 15 or more persons shall, for at least 3 years, follow completion of the evaluation required under paragraph (c)(1) of this section, maintain on file, make available for public inspection, and provide to the Assistant Administrator upon request:

(i) A list of the interested persons consulted;

(ii) A description of areas examined and any problems identified; and

(iii) A description of any modifications made and of any remedial steps taken.

§ 1251.106 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* A recipient that employs 15 or more persons shall designate at least one person to coordinate its efforts to comply with this part.

(b) *Adoption of grievance procedures.* A recipient that employs 15 or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Such procedures need not to be established with respect to complaints from applicants for employment or from applicants for admission to postsecondary educational institutions.

§ 1251.107 Notice.

(a) A recipient that employs 15 or more persons shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of handicap in violation of section 504 and this part. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its programs and activities. The notification shall also include an identification of the responsible employee designated pursuant to § 1251.106(a). A recipient shall make the initial notification required by this paragraph within 90 days of the effective date of this part. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipient's publication, and distribution of memoranda or other written communications.

(b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of this section and this paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

§ 1251.108 Administrative requirements for small recipients.

The Assistant Administrator may require any recipient with fewer than 15 employees, or any class of such recipients, to comply with §§ 1251.106 and 1251.107, in whole or in part, when the Assistant Administrator finds a violation of this part or finds that such compliance will not significantly impair the ability of the recipient or class of recipients to provide benefits or services.

§ 1251.109 Effect of State or local law or other requirements and effect of employment opportunities.

(a) The obligation to comply with this part is not obviated or alleviated by the existence of any state or local law or other requirement that, on the basis of handicap, imposes prohibitions or limits upon the eligibility of qualified handicapped persons to receive services or to practice any occupation or profession.

(b) The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for handicapped persons than for nonhandicapped persons.

Subpart 1251.2—Employment Practices

§ 1251.200 Discrimination prohibited.

(a) *General.* (1) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity to which this part applies.

(2) A recipient that receives assistance shall take positive steps to employ and advance in employment qualified handicapped persons in programs assisted under the Act.

(3) A recipient shall make all decisions concerning employment under any program or activity to which this part applies in a manner which ensures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(4) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. The relationships referred to in this subparagraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeship programs.

(b) *Specific activities.* The provisions of this subpart apply to:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(7) Selection and financial support for training including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including social or recreational programs; and

(9) Any other term, condition, or privilege of employment.

(c) A recipient's obligation to comply with this subpart is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

(d) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. The relationships referred to in this paragraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeship programs.

§ 1251.201 Reasonable accommodation.

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

(b) Reasonable accommodation may include:

(1) Making facilities used by employees readily accessible to and usable by handicapped persons; and

(2) Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

(c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's program, factors to be considered include:

(1) The overall size of the recipient's program with respect to number of employees, number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the composition and structure of the recipient's workforce; and

(3) The nature and cost of the accommodation needed.

(d) A recipient may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

§ 1251.202 Employment criteria.

(a) A recipient may not make use of any employment test or other selection criterion that screens out or tends to screen out handicapped persons or any class of handicapped persons unless:

(1) The test score or other selection criterion, as used by the recipient, is shown to be job-related for the position in question; and

(2) Alternative job-related tests or criteria that do not screen out or tend to screen out as many handicapped persons are not shown by the Assistant Administrator to be available.

(b) A recipient shall select and administer tests concerning employment so as best to ensure that, when administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure, rather than reflecting the applicant's or employee's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

§ 1251.203 Preemployment inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct a preemployment medical examination or may not make preemployment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. A recipient may, however, make preemployment inquiry into an applicant's ability to perform job-related functions.

(b) When a recipient is taking remedial action to correct the effects of past discrimination pursuant to § 1251.105(a), when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its Federally assisted program or activity pursuant to § 1251.105(b), or when a recipient is taking affirmative action pursuant to section 504 of the Act, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped, provided that:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if

no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary of affirmative action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this part.

(c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty, provided that:

(1) All entering employees are subjected to such an examination regardless of handicap; and

(2) The results of such an examination are used only in accordance with the requirements of this part.

(d) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that:

(1) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodations;

(2) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and

(3) Government officials investigating compliance with the Act shall be provided relevant information upon request.

Subpart 1251.3—Program Accessibility

§ 1251.300 Discrimination prohibited.

No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies.

§ 1251.301 Existing facilities.

(a) *Program accessibility.* A recipient shall operate each program or activity to which this part applies so that the program or activity, when viewed in its entirety, is readily accessible to handicapped persons. This paragraph does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

(b) *Methods.* A recipient may comply with the requirement of paragraph (a) of this section through such means as redesign of equipment; reassignment of classes or other services to accessible buildings; assignment of aides to beneficiaries; home visits; delivery of health, welfare, or other social services at alternate accessible sites; alteration of existing facilities and construction of new facilities in conformance with the requirements of § 1251.302; or any other methods that result in making its program or activity accessible to handicapped persons. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (a) of this section. In choosing among available methods for meeting the requirement of paragraph (a) of this section, a recipient shall give priority to those methods that offer programs and activities to handicapped persons in the most integrated setting appropriate.

(c) *Time period.* A recipient shall comply with the requirement of paragraph (a) of this section within 60 days of the effective date of this part except that where structural changes in facilities are necessary, such changes shall be made within 3 years of the effective date of this part, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipient shall develop, within 6 months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum:

(1) Identify physical obstacles in the recipient's facilities that limit the accessibility of its program or activity to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve full program accessibility and, if the time period of the transition plan is longer than 1 year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the person responsible for implementation of the plan.

(e) *Notice.* The recipient shall adopt and implement procedures to ensure that interested persons, including persons with inpaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by handicapped persons.

§ 1251.302 New construction.

(a) *Design and construction.* Each facility or part of a facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by handicapped persons, if the construction (ground breaking) was commenced after the effective date of this part.

(b) *Alteration.* Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this part in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by handicapped persons.

(c) *Conformance with Uniform Federal Accessibility Standards.* (1) Effective as of January 18, 1991, design, construction, or alteration of buildings in conformance with sections 3-8 of the Uniform Federal Accessibility Standards (USAF) (appendix A to 41 CFR subpart 101-19.6) shall be deemed to comply with the requirements of this section with respect to those buildings. Departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided.

(2) For purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of persons with physical handicaps.

(3) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.

[51 FR 26862, July 28, 1986, as amended at 55 FR 52138, 52140, Dec. 19, 1990]

EFFECTIVE DATE NOTE: At 55 FR 52138, 52140, Dec. 19, 1990, paragraph (c) of § 1251.302 was revised, effective January 18, 1991. For the convenience of the user, the superseded text follows:

§ 1251.302 New construction.

* * * * *

(c) *American National Standards Institute accessibility standards.* Design, construction, or alteration of facilities in conformance with the "American National Standards Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," published by the American National Standards Institute, Inc., (ANSIA117.1-1961 (R1971)),[1] shall constitute compliance with paragraphs (a) and (b) of this section. Departures from particular requirements of those standards by the use of other methods shall be permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided.

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[1] Copies obtainable from American National Standards Institute, 1430 Broadway, New York, NY 10018.

Subpart 1251.4—Procedures

§ 1251.400 Procedures for compliance.

The procedural provisions applicable to Title VI of the Civil Rights Act of 1964 apply to this part. These procedures are found in §§ 1250.106, 1250.108 and 1250.110 of this chapter.

Subpart 1251.5—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the National Aeronautics and Space Administration

Source: 53 FR 25882 and 25885, July 8, 1988, unless otherwise noted.

§ 1251.501 Purpose.

The purpose of this regulation is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 1251.502 Application.

This regulation (§§ 1251.501-1251.570) applies to all programs or activities conducted by the agency, except for programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

§ 1251.503 Definitions.

For purposes of this regulation, the term—

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

Complete complaint means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

Historic preservation programs means programs conducted by the agency that have preservation of historic properties as a primary purpose.

Historic properties means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate State or local government body.

Individual with handicaps means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase:

(1) *Physical or mental impairment* includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term *physical or mental impairment* includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) *Major life activities* includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the agency as having such an impairment.

Qualified individual with handicaps means—

(1) With respect to preschool, elementary, or secondary education services provided by the agency, an individual with handicaps who is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive education services from the agency;

(2) With respect to any other agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature;

(3) With respect to any other program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(4) *Qualified handicapped person* as that term is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this regulation by § 1251.540.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516, 88 Stat. 1617); the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602, 92 Stat. 2955); and the Rehabilitation Act Amendments of 1986 (Pub. L. 99-506, 100 Stat. 1810). As used in this regulation, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

Substantial impairment means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

§§ 1251.504—1251.509 [Reserved]

§ 1251.510 Self-evaluation.

(a) The agency shall, by September 6, 1989, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this regulation and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, for at least three years following completion of the self-evaluation, maintain on file and make available for public inspection:

(1) A description of areas examined and any problems identified; and

(2) A description of any modifications made.

§ 1251.511 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this regulation and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 1251.512—1251.529 [Reserved]

§ 1251.530 General prohibitions against discrimination.

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless such action is necessary to provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards;

(vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified individuals with handicaps to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. How-

ever, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this regulation.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive order to a different class of individuals with handicaps is not prohibited by this regulation.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

§§ 1251.531—1251.539 [Reserved]

§ 1251.540 Employment.

No qualified individual with handicaps shall, on the basis of handicap, be subject to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR Part 1613, shall apply to employment in federally conducted programs or activities.

§ 1251.541—1251.548 [Reserved]

§ 1251.549 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 1251.550, no qualified individual with handicaps shall, because the agency's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 1251.550 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by individuals with handicaps;

(2) In the case of historic preservation programs, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 1251.550(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods*—(1) *General.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(2) *Historic preservation programs.* In meeting the requirements of § 1251.550(a) in historic preservation programs, the agency shall give priority to methods that provide physical access to individuals with handicaps. In cases where a physical alteration to an historic property is not required because of § 1251.550(a) (2) or (3), alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide individuals with handicaps into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by November 7, 1988, except that where structural changes in facilities are undertaken, such changes shall be made by September 6, 1991, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by March 6, 1989, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

§ 1251.551 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151-4157), as established in 41 CFR 101-19.600 to 101-19.607, apply to buildings covered by this section.

§§ 1251.552—1251.559 [Reserved]

§ 1251.560 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the individual with handicaps.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by

telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used to communicate with persons with impaired hearing.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 1251.560 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§§ 1251.561—1251.569 [Reserved]

§ 1251.570 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs and activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR Part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Assistant Administrator for Equal Opportunity Programs shall be responsible for coordinating implementation of this section. Complaints may be sent to the Office of Equal Opportunity Programs, Room 6119, 400 Maryland Avenue, SW., Washington, DC 20546.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), is not readily accessible to and usable by individuals with handicaps.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by § 1251.570(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

[53 FR 25882 and 25885, July 8, 1989]

PART 1252—NONDISCRIMINATION ON THE BASIS OF AGE IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

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1252.411 Age distinctions.

Authority: Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 *et seq.* (45 CFR Part 90).

Source: 50 FR 13311, Apr. 4, 1985, unless otherwise noted.

Subpart 1252.1—General

§ 1252.100 What is the purpose of NASA's age discrimination regulations?

The purpose of these regulations is to set out NASA's policies and to implement agencywide or agency procedures under the Age Discrimination Act of 1975 according to the government-wide age discrimination regulations at 45 CFR Part 90. (Published at 44 FR 33768, June 12, 1979.) The Act and the government-wide regulations prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act and the governmentwide regulations permit federally assisted programs and activities and recipients of Federal funds, to continue to use age distinctions and factors other than age which meet the requirements of the Act and the governmentwide regulations.

§ 1252.102 To what programs do these regulations apply?

(a) These regulations apply to each NASA recipient and to each program or activity operated by the recipient which receives or benefits from Federal financial assistance provided by NASA.

(b) The Age Discrimination Act of 1975 does not apply to:

(1) An age distinction contained in that part of a Federal, State, or local statute or ordinance adopted by an elected body which:

(i) Provides any benefits or assistance to persons based on age; or

(ii) Establishes criteria for participation in age-related terms; or

(iii) Describes intended beneficiaries or target groups in age-related terms.

(2) Any employment practice of any employer, employment agency, labor organization, or any labor-management joint apprenticeship training program, except for any program or activity receiving Federal financial assistance for public service employment under the Comprehensive Employment and Training Act of 1974 (CETA) (29 U.S.C. 801 *et seq.*).

§ 1252.103 Definitions.

As used in these regulations, the term:

(a) *Act* means the Age Discrimination Act of 1975, as amended. (Title III of Pub. L. 94-135.)

(b) *Action* means any act, activity, policy, rule, standard, or method of administration; or the use of any policy, rule, standard, or method of administration.

(c) *Age* means how old a person is, or the number of elapsed years from the date of a person's birth.

(d) *Age distinction* means any action using age or an age-related term.

(e) *Age-related term* means a word or words which necessarily imply a particular age or range of ages (for example, "children," "adult,""older persons," but not "student").

(f) *Discrimination* means unlawful treatment based on age.

(g) *NASA* means the National Aeronautics and Space Administration.

(h) *Federal financial assistance* means any grant, entitlement, loan, cooperative agreement contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the agency provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel; or interest in or use of property, including:

(i) Transfer or lease of property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of property if the Federal share of its fair market value is not returned to the Federal Government.

(i) *FMCS* means the Federal Mediation and Conciliation Service.

(j) *Recipient* means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended, directly or through another recipient. Recipient includes any successor, assignee, or transferee, but excludes the ultimate beneficiary of the assistance.

(k) *Administrator* means the Administrator of the National Aeronautics and Space Administration or designee.

(l) *Subrecipient* means any of the entities in the definition of "recipient" to which a recipient extents or passes on Federal financial assistance. A subrecipient is generally regarded as a recipient of Federal financial assistance and has all the duties of a recipient in these regulations.

(m) *United States* means the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, the Trust Territory of the Pacific Islands, the Northern Marianas, and the territories and possessions of the United States.

Subpart 1252.2—Standards for Determining Age Discrimination

§ 1252.200 Rules against age discrimination.

The rules stated in this section are limited by the exceptions contained in § 1252.201.

(a) *General rule:* No person in the United States shall, on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(b) *Specific rules:* A recipient may not, in any program or activity receiving Federal financial assistance, directly or through contractual, licensing, or other arrangements use age distinctions or take any other actions which have the effect, on the basis of age, of:

(1) Excluding individuals from, denying them the benefits of, or subjecting them to discrimination under a program or activity receiving Federal financial assistance; or

(2) Denying or limiting individuals in their opportunity to participate in any program or activity receiving Federal financial assistance.

(c) The specific forms of age discrimination listed in paragraph (b) of this section do not necessarily constitute a complete list.

§ 1252.201 Exceptions to the rules against age discrimination.

(a) Definitions. For purposes of this section, the terms *normal operation* and *statutory objective* shall have the following meaning:

(1) *Normal operation* means the operation of a program or activity without significant changes that would impair its ability to meet its objectives.

(2) *Statutory objective* means any purpose of a program or activity expressly stated in any Federal statute, state statute or local statute or ordinance adopted by any elected, general purpose legislative body.

(b) Normal operation or statutory objective of any program or activity. A recipient is permitted to take an action otherwise prohibited by § 1252.200 if the action reasonably takes into account age as a factor necessary to the normal operation of the achievement of any statutory objective of a program or activity. An action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity, if:

(1) Age is used as a measure of approximation of one or more other characteristics; and

(2) The other characteristic(s) must be measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity; and

(3) The other characteristic(s) can be reasonably measured or approximated by the use of age; and

(4) The other characteristic(s) are impractical to measure directly on an individual basis.

(c) Reasonable factors other than age. A recipient is permitted to take an action otherwise prohibited by § 1252.200 which is based on a factor other than age, even though that action may have a disproportionate effect on persons of different ages. An action may be based on a factor other than age only if the factor bears a direct and substantial relationship to the normal operation of the program or activity or to the achievement of a statutory objective.

§ 1252.202 Burden of proof.

The burden of proving that an age distinction or other action falls within the exceptions outlined in § 1252.201 (b) and (c) is on the recipient of Federal financial assistance.

§ 1252.203 Special benefits for children and the elderly.

If a recipient operating a program provides special benefits to the elderly or to children, such use of age distinctions shall be presumed to be necessary to the normal operation of the program, notwithstanding the provision of § 1252.10.

Subpart 1252.3—Responsibilities of Recipients

§ 1252.300 General responsibilities of recipients.

Each NASA recipient must ensure that its programs and activities comply with these regulations.

§ 1252.301 Notice to subrecipients.

Where a recipient passes on Federal financial assistance from NASA to subrecipients, the recipient shall provide the subrecipient written notice of their obligations under these regulations.

§ 1252.302 Assurance of compliance and recipient assessment of age distinctions.

(a) Each recipient of Federal financial assistance from NASA shall sign a written assurance as specified by NASA that it will comply with the Act and these regulations.

(b) *Recipient assessment of age distinctions.* (1) As part of a compliance review under § 91.41, NASA may require a recipient employing the equivalent of 15 or more employees to complete a written self-evaluation, in a manner specified by the responsible Agency official, of any age distinction imposed in its program or activity receiving Federal financial assistance from NASA to assess the recipient's compliance with the Act.

(2) Whenever an assessment indicates a violation of the Act and the NASA regulations, the recipient shall take corrective action.

§ 1252.303 Information requirements.

(a) Keep records in a form that contains information which NASA determines may be necessary to ascertain whether the recipient is complying with the Act and these regulations.

(b) Provide to NASA, upon request, information and reports which NASA determines are necessary to ascertain whether the recipient is complying with the Act and these regulations.

(c) Permit reasonable access by NASA to the books, records, accounts, and other recipient facilities and sources of information to the extent NASA determines is necessary to ascertain whether the recipient is complying with the Act and these regulations.

Subpart 1252.4—Investigation, Conciliation, and Enforcement Procedures

§ 1252.400 Compliance reviews.

(a) NASA may conduct compliance reviews and pre-award reviews of recipients or use other similar procedures that will permit it to investigate and correct violations of the Act and these regulations. NASA may conduct these reviews even in the absence of a complaint against a recipient. The review may be as comprehensive as necessary to determine whether a violation of these regulations has occurred.

(b) If a compliance review or pre-award review indicates a violation of the Act or these regulations, NASA will attempt to secure the recipient's voluntary compliance with the Act. If voluntary compliance cannot be achieved, NASA will arrange for enforcement as described in § 1252.405.

§ 1252.401 Complaints.

(a) Any person, individually or as a member of a class or on behalf of others, may file a complaint with NASA, alleging discrimination prohibited by the Act or these regulations based on an action occurring on or after July 1, 1979. A complaint must be filed within 180 days from the date the complainant first had knowledge of the alleged act of discrimination. However, for good cause shown, NASA may extend this time limit.

(b) NASA will attempt to facilitate the filing of complaints wherever possible, including taking the following measures:

(1) Accepting as a sufficient complaint, any written statement, which identifies the parties involved and the date the complainant first had knowledge of the alleged violation, describes generally the action or practice complained of, and assigned by the complainant.

(2) Freely permitting a complainant to add information to the complaint to meet the requirements of a sufficient complaint.

(3) Widely disseminating information regarding the obligations of recipients under the Act and these regulations.

(4) Notifying the complainant and the recipient of their rights and obligations under the complaint procedure, including the right to have a representative at all stages of the complaint procedure.

(5) Notifying the complainant and the recipient (or their representatives) of their right to contact NASA for information and assistance regarding the complaint resolution process.

(c) NASA will return to the complainant any complaint outside the jurisdiction of these regulations, and will state the reason(s) why it is outside the jurisdiction of these regulations.

§ 1252.402 Mediation.

(a) Referral of complaints for mediation. NASA will refer to the Federal Mediation and Conciliation Service all complaints that:

(1) Fall within the jurisdiction of the Act and these regulations; and

(2) Contain all information necessary for further processing.

(b) Both the complainant and the recipient shall participate in the mediation process to the extent necessary to reach an agreement or make an informed judgment that an agreement is not possible. There must be at least one meeting with the mediator before NASA will accept a judgment that an agreement is not possible. However, the recipient and the complainant need not meet with the mediator at the same time.

(c) If the complainant and the recipient reach an agreement, the mediator shall prepare a written statement of the agreement and have the complainant and recipient sign it. The mediator shall send a copy of the agreement to NASA. NASA will take no further action on the complaint unless the complainant or the recipient fails to comply with the agreement. However, NASA retains the right to monitor the recipient's compliance with the agreement.

(d) The mediator shall protect the confidentiality of all information obtained in the course of the mediation process. No mediator shall testify in any adjudicative proceeding, produce any document, or otherwise disclose any information obtained in the course of the mediation process without prior approval of the head of the mediation agency.

(e) NASA will use the mediation process for a maximum of 60 days after receiving a complaint.

(f) Mediation ends if:

(1) 60 days elapse from the time NASA receives the complaint; or

(2) Prior to the end of that 60-day period, an agreement is reached; or

(3) Prior to the end of that 60-day period, the mediator determines that an agreement cannot be reached.

(g) The mediator shall return unresolved complaints to NASA.

§ 1252.403 Investigation.

(a) *Informal inquiry.* (1) NASA will investigate complaints that are unresolved after mediation or are reopened because of a violation of a mediation agreement.

(2) As part of the initial inquiry, NASA will use informal fact finding methods, including joint or separate discussions with the complainant and recipient to establish the facts, and, if possible, settle the complaint on terms that are mutually agreeable to the parties. NASA may seek the assistance of any involved State program agency.

(3) NASA will put any agreement in writing and have it signed by the parties and an authorized official at NASA.

(4) The settlement shall not affect the operation of any other enforcement effort of NASA, including compliance reviews and investigation of other complaints which may involve the recipient.

(5) The settlement is not a finding of discrimination against a recipient.

(b) *Formal investigation.* If NASA cannot resolve the complaint through informal means it will develop formal findings through further investigations of the complaint. If the investigation indicates a violation of these regulations, NASA will attempt to obtain voluntary compliance. If NASA cannot obtain voluntary compliance, it will begin enforcement as described in § 1252.405.

§ 1252.404 Prohibition against intimidation or retaliation.

A recipient may not engage in acts of intimidation or retaliation against any person who:

(a) Attempts to assert a right protected by the Act or these regulations; or

(b) Cooperates in any mediation, inquiry, hearing, or other part of NASA's investigation, conciliation, and enforcement process.

§ 1252.405 Compliance procedure.

(a) NASA may enforce the Act and these regulations through:

(1) Termination of a recipient's Federal financial assistance from NASA under the program or activity involved where the recipient has violated the Act or these regulations. The determination of the recipient's violation may be made only after a recipient has had an opportunity for a hearing on the record before an administrative law judge. Therefore, cases which are settled in mediation, or prior to a hearing, will not involve termination of a recipient's Federal financial assistance from NASA.

(2) Any other means authorized by law including but not limited to:

(i) Referral to the Department of Justice for proceedings to enforce any rights of the United States or obligations of the recipient created by the Act or these regulations.

(ii) Use of any requirement of or referral to any Federal, State, or local government agency that will have the effect of correcting a violation of the Act or these regulations.

(b) NASA will limit any termination under § 1252.405(a)(1) to the particular program activity NASA finds in violations of these regulations. NASA will not base any part of a termination on a finding with respect to any program or activity of the recipient which does not receive Federal financial assistance from NASA.

(c) NASA will take no action under paragraph (a) until:

(1) The Administrator has advised the recipient of its failure to comply with the Act and these regulations and has determined that voluntary compliance cannot be obtained.

(2) 30 days have elapsed after the Administrator has sent a written report of the circumstances and grounds of the action to the committees of Congress having legislative jurisdiction over the Federal program or activity involved. The Administrator will file a report whenever any action is taken under paragraph (a) of this section.

(d) NASA also may defer granting new Federal financial assistance from NASA to a recipient when a hearing under § 1252.405(a)(1) is initiated.

(1) New Federal financial assistance from NASA includes all assistance for which NASA requires an application or approval, including renewal or continuation of existing activities during the deferral period. New Federal financial assistance from NASA does not include assistance approved prior to the beginning of a hearing under § 1252.405(a)(1).

(2) NASA will not begin a deferral until the recipient has received a notice of an opportunity for a hearing under § 1252.405(a)(1). NASA will not continue a deferral for more than 60 days unless a hearing has begun within that time or the time for beginning the hearing has been extended by mutual consent of the recipient and the Administrator. NASA will not continue a deferral for more than 30 days after the close of the hearing, unless the hearing results in a finding against the recipient.

§ 1252.406 Hearings.

The procedural provisions for those hearings required by § 1252.405 are contained in 14 CFR 1250.108.

§ 1252.407 Notices, decisions, and post-termination proceedings.

All notices, decisions, and post-termination proceedings, insofar as NASA is concerned, shall be made in accordance with 14 CFR 1250.109.

§ 1252.408 Remedial action by recipients.

(a) Where NASA finds a recipient has discriminated on the basis of age, the recipient shall take any remedial action that NASA may require to overcome the effects of the discrimination. If another recipient exercises control over the recipient that has discriminated, NASA may require both recipients to take remedial action.

(b) Even in the absence of discrimination, a recipient may take affirmative action to overcome the effects of conditions that resulted in limited participation in the recipients program or activity on the basis of age.

§ 1252.409 Alternate funds disbursal procedure.

(a) When NASA withholds funds from a recipient under these regula-

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tions, the Administrator may disburse the withheld funds directly to an alternate recipient.

(b) The Administrator will require any alternate recipient to demonstrate:

(1) The ability to comply with these regulations; and

(2) The ability to achieve the goals of the Federal statute authorizing the program or activity.

§ 1252.410 Exhaustion of administrative remedies.

(a) A complainant may file a civil action following the exhaustion of administrative remedies under the Act. Administrative remedies are exhausted if:

(1) 180 days have elapsed since the complainant filed the complaint and NASA has made no finding with regard to the complaint; or

(2) NASA issues any findings in favor of the recipient.

(b) If NASA fails to make a finding within 180 days or issues a finding in favor of the recipient, NASA will:

(1) Promptly advise the complainant of this fact; and

(2) Advise the complainant of his or her right to bring a civil action for injunctive relief; and

(3) Inform the complainant:

(i) That the complainant may bring a civil action only in a United States district court for the district in which the recipient is located or transacts business;

(ii) That a complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that the complainant must demand these costs in the complaint.

(iii) That before commencing the action the complainant shall give 30 days notice by registered mail to the Administrator, the Attorney General of the United States, and

(iv) That the notice must state: the alleged violation of the act; the relief requested; the court in which the complainant is bringing the action; and, whether or not attorney's fees are demanded in the event the complainant prevails; and

(v) That the complainant may not bring an action if the same alleged violation of the Act by the same recipient is the subject of a pending action in any court of the United States.

§ 1252.411 Age distinctions.

There are no Federal statutes or regulations containing age distinctions which affect financial assistance administered by the agency.

PART 1259—NATIONAL SPACE GRANT COLLEGE AND FELLOWSHIP PROGRAM

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Subpart 1—Basic Policy

§ 1259.100 Scope of part.

(a) This Part 1259 establishes the policies, responsibilities and procedures relative to the National Space Grant College and Fellowship Program established by Title II of the National Aeronautics and Space Administration Authorization Act of 1988 (Pub. L. 100-147, Oct. 30, 1987, 101 Stat. 869-875, 42 U.S.C. 2486). This statute authorizes the Administrator of the National Aeronautics and Space Administration (NASA), in order to carry out the purposes of the National Space Grant College and Fellowship Act (the Act), to accept conditional or unconditional gifts and donations, to accept and use funds from other Federal departments, agencies and instrumentalities, to make awards with respect to such needs or problems and to designate Space Grant colleges. It further directs the Administrator to establish a graduate fellowship program to provide educational assistance to qualified individuals in fields related to space, and to establish an independent committee known as the Space Grant Review Panel to review and advise the Administrator with respect to Space Grant programs.

(b) The regulations of this part do not apply to awards made by NASA under any other authority.

§ 1259.101 Definitions.

For the purposes of this part, the following definitions shall apply:

(a) "Field related to space" means any academic discipline or field of study (including the physical, natural and biological sciences, and engineering, space technology, education, economics, sociology, communications, planning, law, international affairs and public administration) which is concerned with or likely to improve the understanding, assessment, development and utilization of space.

(b) "Institution of higher education" means any college or university in any State which:

(1) Admits as regular students only individuals who have a certificate of graduation or equivalent from a secondary school;

(2) Is legally authorized within such State to provide a program of education beyond secondary education;

(3) Provides an educational program for which a bachelor's degree or other higher degree is awarded;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association.

(c) "National of the United States" means a citizen of the United States or a native resident of a possession of the United States. It does not refer to or include a citizen of another country who has applied for United States citizenship.

(d) "Panel" means the Space Grant Review Panel established pursuant to section 210 of the Act.

(e) "Person" means any individual, public or private corporation, partnership or other association or entity (including any Space Grant college, Space Grant consortium, institution of higher education, institute or laboratory), or any State, political subdivision thereof, or agency or officer of a State or political subdivision thereof.

(f) "Space" means "aeronautical and space activities" which has the meaning given to such term in section 103(1) of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2452).

(g) "Space Grant college" means any public or private institution of higher education which is designated as such by the Administrator or designee pursuant to section 208 of the Act.

(h) "Space Grant regional consortium" means any association or other alliance which is designated as such by the Administrator or designee pursuant to section 208 of the Act.

(i) "Space Grant program" means any program which:

(1) Is administered by any Space Grant college, Space Grant regional consortium, institution of higher education, institute, laboratory or State or local agency; and

(2) Includes two or more projects involving education and one or more of

the following activities in the fields related to space:

(i) Research;

(ii) Training; or

(iii) Advisory services.

(j) "Space Grant program award" means any award contemplated under section 206(a) of the Act.

(k) "Special Space Grant program award" means any award extended under section 206(b) of the Act.

(l) "Specific national need grant" means any award extended under section 207 of the Act.

(m) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands and any other territory or possession of the United States.

(n) "State Space Grant cooperating institution" means any institution of higher education in a State which does not have a designated Space Grant college that is named by the Administrator or designee to provide selected Space Grant program functions within that State.

§ 1259.102 General policy.

(a) In accordance with subsections 103(a)(2) and (3) of the National Aeronautics and Space Act of 1958, as amended, (42 U.S.C. 2457(a)(3)), it is NASA's policy, through various educational programs, to provide direct support for and encouragement to teachers, students and prospective students in fields related to space.

(b) In compliance with the National Space Grant College and Fellowship Act (42 U.S.C. 2486), it shall be NASA's purpose to:

(1) Increase the understanding, assessment, development and utilization of space resources by promoting a strong educational base, responsive research and training activities and broad and prompt dissemination of knowledge and techniques;

(2) Utilize the abilities and talents of the universities of the Nation to support and contribute to the exploration and development of the resources and opportunities afforded by the space environment;

(3) Encourage and support the existence of interdisciplinary and multidisciplinary programs of space research, to engage in activities of training (including teacher education), research and public service and to have cooperative programs with industry;

(4) Encourage and support the existence of consortia, composed of university and industry members, to advance the exploration and development of space resources in cases in which national objectives can be better fulfilled than through the programs of single universities;

(5) Encourage and support Federal funding for graduate fellowships in fields related to space;

(6) Support activities in colleges and universities generally for the purpose of creating and operating a network of institutional programs that will enhance achievements resulting from efforts under this Act; and

(7) Encourage cooperation and coordination among Federal agencies and Federal programs concerned with space issues.

(c) It shall be NASA's policy to designate Space Grant colleges, State Space Grant cooperating institutions and Space Grant regional consortia and award fellowships, grants, contracts and other transactions competitively in a merit-based review process.

(d) It shall be NASA's policy to designate and make awards without discriminating on the basis of sex, race, color, religion, national origin or handicap.

§ 1259.103 Special authorities—gift acceptance and other Federal funding.

(a) Acceptance of gifts:

(1) In order to carry out the provisions of the Act, the Administrator is authorized to accept conditional or unconditional gifts or donations of services, money or property, real, personal or mixed, tangible or intangible. This authority is delegated to the Director, Educational Affairs Division.

(2) The Administrator or designee may decline any gift or donation that the Administrator determines is not in accord with the purposes of the program. Also, conditional gifts or donations that are not in compliance with

the Act or the implementing regulations shall be declined. NASA may use a reasonable amount from a gift or donation to cover any administrative costs associated with such gift or donation.

(b) Acceptance and use of funds from other Federal agencies:

(1) To carry out the provisions of the Act, the Administrator is authorized to accept and use funds from other Federal departments, agencies and instrumentalities to pay for awards under this program. This authority is delegated to the Director, Educational Affairs Division.

(2) The Administrator or designee may decline any such funds when the Administrator determines acceptance would not be in accord with the purposes of the program. NASA may use a reasonable amount from transferred Federal funds to cover any administrative costs associated with such transfer.

Subpart 2—Space Grant Program and Project Awards

§ 1259.200 Description.

Awards are authorized to establish any Space Grant and/or fellowship program or project if such program or project will further the purposes of the Act.

§ 1259.201 Types of Space Grant program and project awards—regular and special.

(a) A regular Space Grant program or project award shall:

(1) Be funded by NASA up to 66 percent of the total cost of the Space Grant award and/or fellowship program involved; or

(2) Be funded up to 100 percent of its cost if funded by another Federal entity.

(b) A special Space Grant program or project award may be funded up to 100 percent of the total cost of the special project if the Administrator or designee, the Director, Educational Affairs Division, finds that:

(1) No reasonable means is available through which the applicant can meet the matching requirements for a regular Space Grant award under paragraph (a) of this section;

(2) The probable benefit of such project outweighs the public interest in such matching requirement; and

(3) The same or equivalent benefit cannot be obtained through the award of a regular Space Grant program or project award under paragraph (a) of this section or the award of a specific national need grant under section 207 of the Act.

§ 1259.202 Application procedures.

(a) The opportunity to apply shall be announced by the Director, Educational Affairs Division.

(b) The application procedures and evaluation guidelines for awards under this section will be included in the announcements of such programs.

(c) The applications will be reviewed by a peer review merit selection panel appointed by the Director, Educational Affairs Division.

§ 1259.203 Limitations.

Public Law 100-147, Section 206(d)(2) and (3), states that:

(a) Funds for awards made under this section may not be used to:

(1) Purchase land;

(2) Purchase, construct, preserve or repair any building; or

(3) Purchase or construct any launch facility or launch vehicle.

(b) Funds may be used to lease any of the items listed in paragraph (a) of this section as long as prior written approval is obtained from the Administrator or designee.

Subpart 3—National Needs Grants

§ 1259.300 Description.

National needs awards may be awarded by the Administrator or designee to meet such needs or problems relating to aerospace identified by the Space Grant Review Panel, by NASA officials or by any person. Such awards may be up to 100 percent of the total cost of the program or project.

§ 1259.301 Identification of national needs.

National needs shall be identified by the Administrator who shall consider specific national needs and problems relating to space proposed by the Space Grant Review Panel, any NASA official or any person.

§ 1259.302 Application procedures.

(a) The Administrator or designee has the authority to make awards to meet identified national needs.

(b) The Director, Educational Affairs Division, shall establish a competitive, merit-based review process to examine unsolicited national needs proposals.

§ 1259.303 Limitations.

The same limitations shall apply as are stated in § 1259.203.

Subpart 4—Space Grant College and Consortium Designation

§ 1259.400 Description.

(a) The Administrator may designate Space Grant colleges, Space Grant college consortia and Space Grant regional consortia in order to establish Federal/university partnerships to promote a strong educational base in the space and aeronautical sciences. These designated colleges and consortia will provide leadership for a network of American colleges and universities, industry and State and local governments in space-related fields. The Administrator hereby delegates this authority to the Director, Educational Affairs Division.

(b) Designation of Space Grant colleges, Space Grant college consortia and Space Grant regional consortia shall be for 5 years. Designation of Space Grant colleges and consortia may be continued based on a merit review at the beginning of the fifth year.

(c) Each designated Space Grant college or consortium will receive:

(1) A Space Grant award that requires a 100 percent match; and

(2) Funds for fellowships.

(d) Each Space Grant college or consortium will be funded annually.

§ 1259.401 Responsibilities.

Each designated Space Grant college or consortium shall:

(a) Designate a Space Grant Program Director;

(b) Establish a Space Grant Office;

(c) Administer a fellowship program;

(d) Develop and implement programs of public service, interdisciplinary space-related programs, advisory activities and cooperation with industry, research laboratories, State and local governments and other colleges and universities, particularly institutions in their State and/or region with significantly large enrollments of racial minorities who are under-represented in science and technology; and

(e) Provide nonfederal matching funds (exclusive of in-kind contributions) for the Space Grant program equal to that provided by NASA.

§ 1259.402 Basic criteria and application procedures.

(a) Any institution of higher education may be designated a Space Grant college if the Administrator or designee finds that it has a balanced program of research, education, training and advisory services in fields related to space, as further defined in the program announcement.

(b) Any association or other alliance of two or more persons may be designated a Space Grant regional consortium, if the Administrator or designee finds that such association or alliance:

(1) Is established for the purpose of sharing expertise, research, educational or training facilities and other capabilities in order to facilitate research, education, training and advisory services, in any field related to space;

(2) Will encourage and follow a regional approach to solving problems or meeting needs relating to space, in cooperation with other institutions of higher education, Space Grant program grantees and other persons in the region.

(c) The opportunity to apply for designation shall be announced by the Director, Educational Affairs Division. The application procedures and evaluation guidelines for designation shall be included in the designation announcement.

(d) Designation will be decided by a competitive merit review of the program proposal measured against the purposes of the Act and including, but not limited to, proposed linkages with other colleges and universities (particularly institutions with significant enrollments of under-represented minority groups), public service and collaboration with space-related industry.

§ 1259.403 Limitations.

The same limitations shall apply as are stated in § 1259.203.

§ 1259.404 Suspension or termination of designation.

The Administrator or designee, the Director, Educational Affairs Division, may, for cause, and after an opportunity for a hearing before an Administrative Judge appointed by the Deputy Administrator, suspend or terminate the Space Grant designation of any institution or consortium.

Subpart 5—Space Grant Fellowships

§ 1259.500 Description.

The Space Grant fellowship program will provide educational and training assistance to qualified individuals at the graduate level in fields related to space. Awards will be made to institutions of higher education for fellowships. The student recipients shall be known as NASA Space Grant Fellows.

§ 1259.501 Responsibilities.

(a) All institutions which receive Space Grant fellowships will be expected to use the awards to increase the pool of graduate students in fields related to space.

(b) The overall fellowship program shall be cognizant of institutional diversity and geographical distribution.

§ 1259.502 Application procedures.

(a) All applicants for designation as Space Grant colleges and consortia must apply for Space Grant fellowships.

(b) Applicants for Space Grant program or project grants (under § 1259.200) and for national needs grants (under § 1259.300) may also apply for Space Grant fellowships.

(c) There will be a merit review selection of Space Grant fellowship awards.

§ 1259.503 Limitations.

(a) Fellowships shall be awarded only to Nationals of the United States.

(b) Any students supported under this fellowship program shall not be funded for more than 4 years unless the Director, Educational Affairs Division, makes an exception.

Subpart 6—Space Grant Review Panel

§ 1259.600 Panel description.

An independent committee, the Space Grant Review Panel, which is not subject to the Federal Advisory Committee Act, shall be established to advise the Administrator with respect to Space Grant program and project awards, the Space Grant fellowship program and the designation and operation of Space Grant colleges and consortia. A majority of the voting members shall be individuals who, by reason of knowledge, experience, or training are especially qualified in one or more of the fields related to space. The other voting members shall be individuals who, by reason of knowledge, experience or training, are especially qualified in, or representative of, education, extension services, State government, industry, economics, planning or any other activity related to the purposes of the Space Grant program.

§ 1259.601 Establishment and composition.

(a) The Panel, to be located at NASA Headquarters in Washington, DC, will be composed of ten voting members who are not current NASA employees.

(b) It shall include four from Federal departments, agencies or entities that have an interest in space programs or science and education, and six nonfederal representatives.

(c) The nonfederal representatives shall include two persons who are directly involved with the Space Grant program at a Space Grant college or consortium, one person involved with the Space Grant program at a university that is not a designated Space Grant college, a university president or chancellor, one representative of a space-related industry and the last person to be from whatever field the Administrator determines to be of greatest concern.

(d) The Panel members shall be appointed by the Administrator or designee.

(e) The relevant organizations and associations in aerospace and science education fields will be asked to provide three names for each position on the panel. The Administrator shall consider them, but not be limited to them, in the selection process.

(f) The Administrator or designee shall select a Chair and a Vice Chair. The Vice Chair shall act as Chair in the absence or incapacity of the Chair.

(g) The Administrator or designee may select NASA officials to serve as ex officio, nonvoting members of the panel.

§ 1259.602 Conflict of interest.

Any member of the Panel who has a personal or financial interest in an issue before the Panel shall abstain from voting on such issue.

§ 1259.603 Responsibilities.

(a) The Panel shall advise the Administrator and the Director, Educational Affairs Division, with respect to:

(1) Applications or proposals for, and performance under, awards made pursuant to sections 206 and 207 of Title II of the Act;

(2) The Space Grant fellowship program;

(3) The designation and operation of Space Grant colleges and Space Grant regional consortia, and the operation of Space Grant and fellowship programs;

(4) The formulation and application of the planning guidelines and priorities pursuant to section 205 (a) and (b)(1) of Title II of the Act; and

(5) Such other matters as the Administrator refers to the Panel for review and advice.

(b) The Panel shall meet biannually and at any other time at the call of the Chair or upon a request from a majority of the voting members or at the call of the Administrator.

(c) The Panel may exercise such powers as are reasonably necessary in order to carry out the duties enumerated in paragraph (a) of this section.

(d) The Director, Educational Affairs Division, shall appoint an Executive Secretary who shall perform administrative duties for the Panel.

(e) Federal members of the Panel will have their agencies reimbursed by NASA for any travel costs and per diem expenses required to attend Panel meetings.

(f) Nonfederal members of the Panel will be reimbursed by NASA for travel costs and per diem expenses required to attend Panel meetings.

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AUTHORITY: Pub. L. 97-258, 31 U.S.C. 6301 *et seq.*

SOURCE: 51 FR 2626, Jan. 17, 1986, unless otherwise noted.

Subpart 1—General

§ 1260.100 Purpose.

This Part 1260, issued by the Assistant Administrator for Procurement under authority delegated by the Administrator, establishes for the National Aeronautics and Space Administration (NASA) uniform policies and procedures relating to the negotiation, award, and administration of research grants and cooperative agreements with educational institutions and other nonprofit organizations, under the authority of Pub. L. 97-258 (31 U.S.C. 6301 *et seq.*).

§ 1260.101 Applicability.

This part applies to all research grants and cooperative agreements made by NASA with educational institutions and other nonprofit organizations.

§ 1260.102 Arrangement of part.

This part is divided into subparts. Each one deals with a separate aspect of research grants and cooperative agreements, and is further subdivided into sections.

§ 1260.103 Contents.

(a) This Part 1260 constitutes NASA's implementation of the public laws executive orders, Executive Branch agency circulars, acquisition regulations, and NASA management issuances applicable to NASA grants and cooperative agreements (see Exhibit F for a detailed listing). Using various techniques ranging from explicit guidance to directing the use of other documents, it prescribes for NASA and grantee use the essential requirements for negotiation, award, and administration of grants and cooperative agreements.

(b) All aspects of this Part 1260 are fully coordinated at the Headquarters level, including review by General Counsel. This affords the individual user uniform, agency-wide interpretation of the material cited in Exhibit F. For example, the applicable parts of OMB Circular A-110 are substantially included (although not always identified) in the appropriate sections. Thus, use of A-110 is unnecessary, except for those instances where this Part 1260 specifically directs the use of A-110 sections.

(c) Every attempt is made to keep the Part 1260 current; however, users are encouraged to contact the Headquarters Procurement Policy Division (Code HP) regarding questions, suggestions, and errors of omission or commission.

[51 FR 2626, Jan. 17, 1986, as amended at 54 FR 43050, Oct. 20, 1989]

§ 1260.104 Amendment.

(a) *NASA Grant and Cooperative Agreement Handbook Instruction.* This handbook will be amended by issuance of printed loose-leaf Instructions containing revised or additional pages, sections, or subparts. Each revised or new page will bear, at the top, the date and the Instruction number. Instructions will be numbered consecutively. Changes to this part will be published in the FEDERAL REGISTER.

(b) *Procurement Information Circulars.* Non-regulatory changes to the Handbook which require immediate dissemination may be made by a Procurement Information Circular, issued by Headquarters, Procurement Policy Division, Code HP.

[51 FR 2626, Jan. 17, 1986, as amended at 52 FR 12378, Apr. 16, 1987]

§ 1260.105 Dissemination and effective date of the part and amendments.

(a) The NASA Grant and Cooperative Agreement Handbook and Instructions will be distributed by Code HP directly to NASA Headquarters offices and to installation distribution points. These NASA elements must inform the Office of Procurement, NASA Headquarters, Procurement Policy Division (Code HP) of the numbers of copies required. Requests for additional copies should be sent directly to Code HP by Headquarters offices or through installations' distribution points.

(b) Heads of installations will ensure that copies of the NASA Grant and Cooperative Agreement Handbook are distributed to all interested activities and individuals within their installation.

(c) Subscriptions to the NASA Grant and Cooperative Agreement Handbook and Instructions may be purchased by private concerns, universities, and individuals from the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402. Instructions are automatically forwarded to subscribers upon issuance.

(d) Compliance with an amendment to the NASA Grant and Cooperative Agreement Handbook shall be effective with the date of issuance thereof, and shall be mandatory effective 60 days thereafter, except as may be otherwise prescribed in the Instruction or Procurement Information Circular.

[51 FR 2626, Jan. 17, 1986, as amended at 52 FR 12378, Apr. 16, 1987; 54 FR 43050, Oct. 20, 1989]

§ 1260.106 Deviations.

(a) *Applicability.* A deviation shall be considered to be any of the following:

(1) When a prescribed grant or cooperative agreement clause is set forth verbatim in this part, use of a clause covering the same subject matter which varies from, or has the effect of altering, the prescribed clause, or changing its application;

(2) When a grant or cooperative agreement clause is set forth in this part, but not for use verbatim, use of a clause covering the same subject matter which is inconsistent with the intent, principle, and substance of the part clause or related coverage of the subject matter;

(3) Omission of any mandatory grant or cooperative agreement clause;

(4) When a NASA or other form is prescribed by this Handbook, use of any other form for the same purpose;

(5) Alteration of a NASA or other form prescribed in this part, except as authorized herein;

(6) When limitations are imposed by this part upon the use of a grant or cooperative agreement clause, form, procedure, or any other grant or cooperative agreement action, the imposition of lesser or greater limitations; or

(7) When a policy, procedure, method, or practice of conducting grant actions is prescribed in this part, any policy, procedure, method, or practice inconsistent therewith.

(8) Creation of a form for grantee use which constitutes a "Collection of Information" within the meaning of the Paperwork Reduction Act of 1980 (44 U.S.C. 35) and its implementation in 5 CFR Part 1320.

(9) Any other action described elsewhere in this Handbook as a deviation.

(b) *Approval of deviations.* Deviations from this Part 1260 will be authorized only when essential to effect necessary grant or cooperative agreement actions or where special circumstances make such deviations clearly in the best interests of the Government. Such deviations will be approved only by the Assistant Administrator for Procurement or a duly authorized representative after review by Office of General Counsel.

(c) *Request for Deviations.* Requests for authority to deviate from this part 1260 shall be submitted to the Assistant Administrator for Procurement, NASA Headquarters (Code HP). Such requests shall be reviewed by local counsel, signed by the Procurement Officer of a field instation (or the Director of the Division in the case of the Headquarters Contracts and Grants Division) and shall be submitted as far in advance as exigencies of the situation will permit. Each request for a deviation shall contain as a minimum:

(1) Identification of the part requirement from which a deviation is sought;

(2) A full description of the deviation and the circumstances in which it will be used;

(3) A description of the intended effect of the deviation;

(4) A statement as to whether the deviation has been requested previously, and, if so, circumstances of the previous request.

(5) The name of the grantee or party to a cooperative agreement and identification of the grant or cooperative agreement affected, including the dollar value; and

(6) Detailed rationale for the request, including any pertinent background information that will contribute to a fuller understanding of the deviation sought.

[51 FR 2626, Jan. 17, 1986, as amended at 54 FR 43050, Oct. 20, 1989]

§ 1260.107 Definitions.

As used throughout this Part 1260, the words and terms defined in this section shall have the meanings set forth below, unless the context in which they are used clearly requires a different meaning, or a different definition is prescribed for a particular subpart or portion thereof. In particular, the term *grant* applies to *grant* and *cooperative agreement* unless otherwise indicated.

(a) *Administrator.* The Administrator or Deputy Administrator of NASA.

(b) *Assistant Administrator for Procurement.* The head of the Office of Procurement, NASA Headquarters (Code H).

(c) *Basic Research.* Systematic, intensive study directed toward greater knowledge or understanding of the subject studies.

(d) *Educational Institution.* Any institution which (1) has a faculty, (2) offers courses of instruction, and (3) is authorized to award a degree upon completion of a specific course of study.

(e) *Equipment.* As used in this part, *equipment* is another term for nonexpendable personal property.

(1) *Government Furnished Equipment.* Equipment in the possession of, or acquired directly by, the Government and subsequently delivered or otherwise made available to a grantee.

(2) *Acquired Equipment.* Equipment purchased or fabricated with grant or cooperative agreement funds by a re-

cipient, for the performance of research under its grant or cooperative agreement.

(f) *Grants officer.* A qualified NASA employee who has been delegated the authority to award and administer grants and cooperative agreements.

(g) *Grant Specialist.* Any employee of NASA who is assigned the responsibility of negotiating with potential grantees the terms and conditions of specific grants and cooperative agreements, and the administration of such grants or cooperative agreements.

(h) *NASA.* The National Aeronautics and Space Administration.

(i) *Subcontract.* A written agreement between a grantee and a third party for the furnishing of services or supplies necessary to carry out the research under a grant or cooperative agreement.

(j) *Support.* Funding of a research project meeting NASA mission objectives.

(k) *Technical Officer.* The official of the cognizant NASA program office who is responsible for monitoring the technical aspects of the work under a grant or cooperative agreement.

[51 FR 2626, Jan. 17, 1986, as amended at 53 FR 38286, Sept. 30, 1988]

§ 1260.108 Federal Acquisition Regulation (FAR, 48 CFR Ch 1).

(a) The FAR is the primary regulation for use by all Federal Executive Agencies in their acquisition of supplies and services with appropriated funds. On April 1, 1984, the FAR, together with agency supplemental regulations, replaced the Federal Procurement Regulation System (FPR), the Defense Acquisition Regulation (DAR), and the NASA Procurement Regulation (NPR, 41 CFR Ch. 18). At the same time, NASA issued its FAR Supplement (NFS, 48 CFR Ch. 18), which established agency-wide, uniform policies and procedures that implement and supplement (but do not repeat, paraphrase, or otherwise restate) the FAR.

(b) As the FAR deals only with procurement, it does not replace the general guidance for issuing and administering grants and cooperative agreements. However, NASA, as in the past, applies certain of its procurement regulations to grants and cooperative agreements. Previously, this was indicated by textual citations of or references to the NPR. Subsequent to April 1, 1984, a formerly unique reference may be replaced by a reference to the FAR, a reference to the NFS, or a reference to both.

(c) The numbering systems in both the FAR and NFS are essentially identical, except that the NFS is identified by a prefixed "18." For example, the government-wise guidance on unsolicited proposals appears in FAR 48 CFR Subpart 15.5, while NASA implementation and additional policies appear in NASA FAR Supplement 48 CFR Subpart 1815.5.

(d) Copies of the FAR and the NFS may be purchased from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402. They are not available to the general public directly from NASA.

§ 1260.109 Prohibitions.

(a) The negotiation, award, administration and renewal of grants are purposefully intended to be as simple as possible. Therefore, this Handbook is silent in various areas where long-established pre- and post-award contractual procedures exist. As such, policies, procedures, representations, certifications, forms or requirements (regardless of modifications) applicable to contracts shall not be used for grants or cooperative agreements unless otherwise authorized by this Handbook or by a deviation thereto.

(b) Installation regulations, handbooks or similar guidance documents shall not unnecessarily repeat, paraphrase, extract, condense, be inconsistent with or otherwise restate the material contained in this Handbook.

(c) Pursuant to NFS 18-37.204-70(c), grants and cooperative agreements shall not be used as legal instruments for consulting service arrangements.

(d) Grants and cooperative agreements shall not be used as legal instruments when the primary purpose of the award is to pay the costs of travel ("Travel Grant") or for the purchase of equipment or supplies ("Equipment Grant"). (This restriction does not preclude otherwise allowable expenditures for travel. equipment or supplies in support of awards made pursuant to § 1260.203.)

[52 FR 12378, Apr. 16, 1987, as amended at 54 FR 43050, Oct. 20, 1989]

§ 1260.110 Grants officer qualifications.

Procurement officers shall (1) establish installation requirements for experience, education, and training of grants officers and (2) develop procedures to ensure that only individuals meeting these requirements are designated as grants officers.

[53 FR 38286, Sept. 30, 1988]

Subpart 2—Basic Policies

§ 1260.200 Authority.

NASA is authorized to award grants and cooperative agreements under Pub. L. 97-258, Money and Finance (63 U.S.C. 6301 *et seq.*). Pub. L. 97-258 saves the authority of Pub. L. 95-224 (31 U.S.C. 501 *et seq.*) which, in turn, saved the authority of the original "Grants Act" (42 U.S.C. 1891-2), including authorization for vesting title of equipment purchased with Federal funds in nonprofit organizations. Section 6306 contains an expanded authority for vesting title in other tangible personal property and applies to cooperative agreements and contracts as well as grants.

§ 1260.201 Policy.

(a) NASA policy is to use the grant instrument to sponsor required research and research related activities at nonprofit institutions or organizations when it is desired (1) to accomplish a public purpose of support or stimulation in the area of research, (2) when no substantial NASA involvement in the technical performance is anticipated, (3) to provide latitude to investigators that will encourage maximum creativity, and (4) to have the minimum administration consistent with the public interest.

(b) NASA policy is to use the cooperative agreement for the same purpose as grants, except that substantial Federal involvement in significant aspects of the effort are necessary for its accomplishment.

(c) In addition, it is NASA policy to provide appropriate continuity of support in research sponsored under grants.

[51 FR 2626, Jan. 17, 1986, as amended at 54 FR 43050, Oct. 20, 1989]

§ 1260.202 Proposals.

(a) *General.* An activity leading to a grant or cooperative agreement must be supported by a valid proposal from the prospective recipient organization. Grants and cooperative agreements are not considered to be subject to any statutory requirements for pre-award synopsis. Proposals are not categorized as "grant proposal" or "contract proposal." In many cases the proposals received will be unsolicited. However, instrument selection under Pub. L. 97-258 is independent of proposal type; therefore, grants and cooperative agreements can result from either solicited or unsolicited proposals. This paragraph emphasizes certain points and provides supplementary information on proposals in the grant environment.

(b) *Unsolicited proposals*—(1) *Applicable regulations.* FAR, 48 CFR 15.5 and the NFS, 48 CFR 1815.5, apply to unsolicited proposals which result in grants and cooperative agreements, unless otherwise noted in this paragraph (b).

(2) *Preliminary discussions.* In accordance with FAR, 48 CFR 15.504 contact with agency technical personnel prior to proposal submission is permissible and is encouraged to determine if preparation of a formal submission is warranted. Such discussions, confined to the limited objectives of conveying to the potential offeror an understanding of the agency mission and needs relative to the type of effort contemplated, do not jeopardize the unsolicited status of any subsequently submitted proposal.

(3) *Proposal validity.* If an invalid proposal is received for funding action, the grants officer should give the institution an opportunity to provide the missing information and should notify the sponsoring technical office of any resultant substantive changes. In the event excessive delay or possible cancellation of the action is con-

templated, the sponsoring office should be notified. In determining proposal validity, note that a broad agency announcement shall not be considered to be an "acquisition requirement" as the term is used for FAR, 48 CFR 15.507(a)(2).

(4) *Renewal proposals.* NFS, 48 CFR 1815.505-70 does not apply. Proposals for renewal of ongoing projects generally emphasize changes since the original award was made and may be simpler than proposals for new efforts. For renewal purposes, solicited proposals received in response to NASA Research Announcements (NRA) may be used to fulfill the unsolicited proposal requirement (see § 1260.402 and NFS, 48 CFR 1835.016-70).

(5) *Acceptance.* (i) The provisions of FAR, 48 CFR 15.507(b), and NFS, 48 CFR 1815.507, do not apply to unsolicited proposals which will result in grants or cooperative agreements.

(ii) The grants officer may commence negotiation with the proposer for the award of a research grant or cooperative agreement when

(A) An unsolicited proposal has received a favorable evaluation;

(B) The proposal is not of the character described in FAR, 48 CFR 15.507(a), i.e., it is not available to the Government without restriction from another source; it does not closely resemble a pending competitive acquisition requirement; and it demonstrates an innovative and unique method, approach, or concept.

(C) The sponsoring technical office supports its recommendation with a Justification for Acceptance of an Unsolicited Proposal (JAUP). The JAUP shall describe the facts and circumstances that preclude competition, along with consideration of the evaluation factors listed in FAR, 48 CFR 15.506-2(a). The JAUP shall be in writing and shall be submitted for approval of the Grants Officer after prior review and written concurrence by the head of the cognizant technical division or laboratory, as applicable. In reviewing the "Justification for Acceptance of an Unsolicited Proposal," the grants officer should bear in mind that the criteria of FAR, 48 CFR 15.506-2(a)(1), are also generally descriptive of work often suitable for support by a grant or cooperative agreement. Since proposals of this type are intellectual products, it is inappropriate and unrealistic to attempt to establish that no one else can perform similar work. It is only necessary to establish that the proposal is the only one available for the type of effort contemplated or has better promise than related or overlapping ones available for evaluation at the same time.

(c) *Solicited proposals.* As a result of the instrument section criteria specified by Pub. L. 97-258 and NASA's implementation in section 1260.203, the award of a grant or cooperative agreement based on a solicited proposal may be appropriate. Grants and cooperative agreements based on solicited proposals are most likely to result from proposals submitted in response to broad agency announcements, such as NRAs or "Announcements of Opportunity" (see NFS, 48 CFR 1870.103).

[51 FR 2626, Jan. 17, 1986, as amended at 53 FR 38286, Sept. 30, 1988]

§ 1260.203 Criteria for selection of award instrument.

(a) *General.* (1) This section provides guidance on the appropriate choice of award instruments consistent with Pub. L. 97-258 and Office of Management and Budget (OMB) implementation of that Law. As a matter of policy, NASA's use of grants, grant regulations and administrative procedures are tailored to educational institutions. Therefore, instrument selection will be made on the basis of this § 1260.203, which accommodates both statute and policy, rather than any additional local interpretation of Pub. L. 97-258. This paragraph applies to all program and individual transactions where the choice of award instruments is within the administrative discretion of NASA and is not otherwise prescribed or limited by law. A variety of award instruments is available as the means for defining the terms and conditions and the nature of the relationship between NASA and eligible recipients. The award instruments are intended to be different in purpose, application, content, and nature.

When properly employed, they create different relationships between the parties. Because of these differences, the decision to use a particular instrument to implement a particular purpose must be made deliberately.

(2) *Procurement contracts.* A procurement contract shall be used as the legal instrument to reflect a relationship between the Federal Government and a recipient whenever (i) the principal purpose of the instrument is the acquisition by purchase, lease, or barter of property or services for the direct benefit or use of the Federal Government; or (ii) whenever NASA determines in a specific instance that the use of a type of procurement contract is appropriate.

(3) *Grants.* A grant agreement shall be used as the legal instrument to reflect a relationship between the Federal Government and a recipient whenever the principal purpose of the relationship is transfer of a thing of value to the recipient in order to accomplish a public purpose of support or stimulation authorized by Federal statute, rather than by acquisition, purchase, lease, or barter of property or services for the direct benefit or use of the Federal Government; and no substantial involvement is expected between NASA acting for the Federal Government and the recipient during performance of the contemplated activity. A proposed award which exhibits the general characteristics set forth in § 1260.203(b)(1) meets the above-described statutory criteria for use of the grant instrument.

(4) *Cooperative agreements.* A cooperative agreement shall be used as the legal instrument to reflect a relationship between the Federal Government and a recipient whenever the principal purpose of the relationship is the transfer of a thing of value to the recipient to accomplish a public purpose of support or stimulation authorized by Federal statute, rather than acquisition by purchase, lease, or barter of property or services for the direct benefit or use of the Federal Government; and substantial involvement is expected between NASA, acting for the Federal Government, and the recipient during performance of the contemplated activity. Situations requiring use of cooperative agreements are limited. The examples and discussions set forth in paragraph (b) of this section shall be used in determining the existence of "substantial involvement."

(b) *Factors to consider in the selection of award instrument.* The cognizant technical officer shall recommened to the contracting officer of the funding installation the selection of the research support instrument (grant, cooperative agreement or contract), regardless of the type of proposal involved, taking into account statutory requirements, NASA policies for dealing with universities, the nature of the proposed research, the manner in which it will be performed, and the nature and extent of interaction between NASA and the performer. Research grants and cooperative agreements may be awarded only to nonprofit institutions of higher education or to nonprofit organizations whose primary purpose is the conduct of scientific research to support research or research-related efforts. Conferences which clearly relate to and have potential for contributing to NASA research interests are considered to be research-related. Research in any academic discipline bearing on NASA research interests normally will qualify as research-related; however, advice of counsel should be sought in unusual situations (see § 1260.301(c)). Similarly, in instances where use of the grant instrument and organizational eligibility does not clearly require a deviation, but where unusual project activities or organizational attributes are evident, advice of local counsel should be obtained. "Travel Grants" or "Equipment Grants" are not authorized as research-related. Award of grants or cooperative agreements to types of organizations or for purposes other than set forth in this § 1260.203(b) requires a deviation (see § 1260.106). As a matter of policy, NASA does not generally award grants for donative assistance purposes, but only to meet program objectives; hence, consideration of any potential benefit accruing to the recipient is extraneous to determination of the support instrument. Since prime responsibility for the pursuit of most basic studies is with the university researcher, it is anticipated that the use of cooperative agreements will be limited to those situations where the project would not be possible without extensive NASA-university collaboration. The close NASA-investigator working relationship normally expected under a research agreement does not constitute substantial involvement. Cooperative agreements would be appropriate, for instance, where a university investigator works for a substantial amount of time at a NASA center (or a NASA investigator works at the university), or when the NASA-university scientific collaboration is such that a jointly authored report is appropriate. The cooperative agreement special provision wording, required by § 1260.419, must state precisely the nature of the NASA-recipient cooperative interaction without which the effort would not be possible. Under no circumstances are cooperative agreements to be used solely to obtain the stricter control requirements typical of a contract. Subject to the statutory requirements set forth in paragraph (a) of this section, the characteristics generally inherent in grants, cooperative agreements, and contracts are as follows:

(1) *Characteristics of a grant instrument.* (i) The principal purpose is to accomplish a NASA objective through stimulating or supporting the acquisition of knowledge or understanding of the subject or phenomena under study, or attempting to determine and exploit the potential of scientific discoveries or improvements in technology, materials, processes, methods, devices, or techniques and advance the state of the art;

(ii) The exact course of the work and its outcome cannot be defined precisely and specific points in time for achievement of significant results cannot be realistically specified;

(iii) NASA desires, or the nature of the proposed investigation is such, that the grantee will bear prime responsibility for the conduct of the research, and exercises judgment and original thought toward attaining the scientific goals within broad parameters of the research areas proposed and the related resources provided;

(iv) The research problem is such that long term support (i.e., in excess of 1 year) is required for the study to mature to maximum scientific effectiveness (however, this does not preclude shorter-term grants in special cases);

(v) Meaningful technical reports (as distinguished from the Semiannual Status Reports) can be prepared only as new findings are made, rather than on a predetermined time schedule;

(vi) Simplicity and economy in execution and administration are mutually desirable; and

(vii) The effort is research or research-related.

(2) Characteristics inherent in a cooperative agreement include the characteristics of a grant plus the following:

(i) Substantial NASA involvement in and contribution to the technical aspects of the effort are necessary for its accomplishment;

(ii) The project, conducted as proposed, would not be possible without extensive NASA-university technical collaboration; and

(iii) The nature of the collaboration can be clearly defined and specified in advance.

(3) Characteristics inherent in a contract are as follows:

(i) The principal purpose is the purchase for the direct use or benefit of NASA's well-defined, specific effort clearly required for the advancement of a programmed NASA mission or project;

(ii) The work to be conducted is directed closely toward the solution of a specific problem;

(iii) A specific service, piece of hardware, or improved performance of a specific device is the end product;

(iv) NASA considers it necessary, and it is reasonable in consideration of the nature of the project, to exercise control over the objectives, direction, specifications, costs or methods of the research, and schedule control is desirable and feasible;

(v) The work to be conducted is classified (however, access to security classified information may be given grantees where a demonstrated need exists);

(vi) The end result is clearly defined and/or parameters and specifications are prepared in advance of the work; and

(vii) A significant portion of the total effort will be performed by an organization other than the one submitting the proposal, and such portion will involve the development, fabrication or acquisition of instruments or hardware.

(4) Other instruments authorized by statute shall be used only after it has been determined, with the advice of General Counsel, that the action cannot be accomplished under a grant, cooperative agreement, or contract, as described above.

[51 FR 2626, Jan. 17, 1986, as amended at 54 FR 43050, Oct. 20, 1989]

§ 1260.204 Processing the instruments.

(a) If a grant or cooperative agreement is selected as the research support instrument, negotiation will be by the funding installation, except for grants to foreign institutions subject to NMI 1362.1

(b) If the award is based on an unsolicited proposal, grants officers will ensure that the appropriate proposal control unit (at either the Installation or Headquarters or both) is informed of the acceptance action. Local installation procedural guidance or guidance from the Headquarters proposal control unit (the Office of Space Sciences and Applications, Code EPM-20) should be followed, as applicable.

(c) Grants officers at field installations and the Headquarters Contracts and Grants Division will furnish to the Procurement Management Division completed NASA Forms 1356, "C.A.S.E. Report on College and University Projects," after all awards, regardless of any exceptions arising from guidance applicable to actions in paragraphs (a) and (b) of this section (see § 1260.602).

[51 FR 2626, Jan. 17, 1986, as amended at 54 FR 43051, Oct. 20, 1989]

§ 1260.205 Civil rights requirements nondiscrimination in certain federally funded programs.

(a) Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352; 42 U.S.C. 2000d-1), Title IX of the Education Amendments of 1972 (20 U.S.C. 1680 *et seq.*), section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*) provide that no person in the United States shall, on the basis of race, color, national origin, sex, handicapped condition, or age be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance, and requires that each government agency which is empowered to extend such financial assistance shall issue rules or regulations effectuating these laws with respect to such programs or activities administered by the agency. NASA's Civil Rights regulations are published as 14 CFR Part 1250 and incorporated into NASA's directives system as NMI 2090, "Civil Rights Act-Nondiscrimination in Federally-Assisted Programs of NASA."

(b) For Civil Rights purposes, NASA determined that research grants and cooperative agreements made under the authority of Pub. L. 97-258 are within the purview of Title VI, Title IX, § 1260.504 and the Age Discrimination Act.

(c) Further implementation instructions, which set forth procedures and guidance and assign responsibility to NASA officials, are contained in 14 CFR Part 1250 (NMI 2090). No grant shall be made unless and until appropriate assurances of compliance with the National Aeronautics and Space Administration regulations under Title VI, Title IX, § 1260.504 and the Age Discrimination Act have been obtained as set forth in 14 CFR Part 1250 (NMI 2090).

§ 1260.206 Printing, binding, and duplicating.

Printing, binding, and duplicating required by NASA shall be obtained in accordance with the Government Printing and Binding Regulations published by the Joint Committee on Printing, Congress of the United States, and NMI 1490.2, "Responsibilities, Procedures, and Standards for NASA Printing, Duplicating, and Binding." Technical proposals should be carefully reviewed to assure that unauthorized printing, binding, or volume duplicating constituting printing are not included in grants. When a proposed grant may involve printing, binding, or duplicating, close coordination will be effected with the Installation Central Printing Management Officer in the review process to ensure compliance with these regulations.

§ 1260.208 Clean Air and Federal Water Pollution Control Acts.

(a) Pursuant to regulations issued by authority of E.O. 11738 by the Environmental Protection Agency (EPA) and published in 40 CFR Part 15, no grant or subgrant or subcontract thereunder in excess of $100,000 shall be awarded, renewed, or extended, except as provided in paragraph (b), if any facility to be utilized thereunder or in the performance thereof is listed on the EPA "List of Violating Facilities," published pursuant to 40 CFR 15.20, the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.*, as amended by Pub. L. 91-604), and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.*, as amended by Pub. L 92-500). This list will be distributed periodically by EPA to all Federal agencies and published in the FEDERAL REGISTER.

(b) When the Administrator determines that the paramount interest of the United States so requires, the Administrator may exempt for a period not to exceed 1 year any individual grant, or any subgrant or subcontract thereunder, from the requirements of this section, and, by rule or regulation following consultation with the Administrator of the EPA, any class of grants or subgrants or subcontracts thereunder. The Administrator shall promptly notify the Administrator of the EPA of any of the exemptions authorized by the foregoing, and the justification therefore, which shall fully describe the purpose of the grant, subgrant, or subcontract and indicate the manner in which the paramount interest of the United States requires that the exemption be made.

(c) Requests for exemptions or renewals thereof shall be made to the Assistant Administrator for Procurement (Attn: Code HP), NASA Headquarters. Requests for individual exemptions shall list the recipient and the amount of the proposed grant, subgrant or subcontract and the title and name of the principal investigator. All requests, whether for individual or class exemptions, shall provide a complete justification as required in paragraph (b) of this section.

§ 1260.209 Property rights in inventions.

(a) The disposition of rights in inventions made by small business firms and nonprofit organizations under contracts, grants and cooperative agreements (including subcontracts thereunder) for the performance of experimental, developmental or research work funded in whole or in part by NASA is governed by chapter 18 of title 35, United States Code (Pub. L. 95-517, Pub. L. 98-620). The disposition of rights to inventions made by other than a small business firm or nonprofit organization under contracts, grants or cooperative agreements (including subcontracts thereunder) in the performance of experimental, developmental, research, design or engineering work for NASA is governed by section 305 of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2457), and to the extent consistent with that law the Presidential Memorandum on Government Patent Policy to the Heads of Executive Departments and Agencies dated February 18, 1983, and section 1(b)(4) of Executive Order 12591, dated April 10, 1987. The implementation of the requirements of Chapter 18 of title 35, United States Code for grants and cooperative agreements is set forth in 37 CFR 401. The implementation of the National Aeronautics and Space Act of 1956, as amended, is set forth in NASA FAR Supplement 18-27.373 (48 CFR 1827.373).

(b) In accordance with paragraph (a) of this section, exhibit G, which is the clause required by 37 CFR 401.414 customized for NASA pursuant to 37 CFR 401.5, shall apply to all grants and cooperative agreements entered into under this Handbook unless either:

(1) The grantee is not located in the United States or does not have a place of business located in the United

States or is subject to the control of a foreign government; or

(2) The grantee is not a nonprofit organization or an alternate provision is to be used in accordance with 37 CFR 401.3.

If the circumstances in paragraph (b)(1) of this section exist, the clause "Invention Reporting and Rights—Foreign" in NASA FAR Supplement 18-52.227-85 (48 CFR 1852.227-85) (suitably tailored to identify the parties and the instrument) may be used as a special condition unless in consultation with installation Patent Counsel, a different provision would be more appropriate. A deviation is not required in this situation. If, in accordance with paragraph (b)(2) of this section, the grantee is not a nonprofit organization or an alternate provision is to be used, a deviation, including concurrence by installation Patent Counsel, is required.

(c) Reports required pursuant to § 1260.409(b) of this Handbook shall be submitted to the grants officer, with a copy to the installation Patent Counsel.

[54 FR 43051, Oct. 20, 1989]

§ 1260.210 Debarment and suspension; and drug-free workplace.

Grants officers shall follow the procedures in NMI 5101.31, Delegation of Authority—Debarment and Suspension Under Grants, Cooperative Agreements and Other Nonprocurement Transactions; and Requirements for a Drug-Free Workplace (Grants), in implementation of 14 CFR part 1265. Before making an award, the grants officer shall ensure that the participant's status has been verified (14 CFR 1265.505 (d) and (e)) and the certification requirements at 14 CFR 1265.510 and 14 CFR 1265.630 have been met. If the required certifications have not been submitted with the proposal, the grants officer shall obtain them before proceeding. However, NASA shall not require any particular form or format. Installations shall not impose local requirements for general submission of certifications with solicited or unsolicited proposals (except as may be otherwise authorized by this Handbook).

[54 FR 43051, Oct. 20, 1989]

Subpart 3—Award of Grants and Cooperative Agreements

§ 1260.301 Instruments.

(a) The grant or cooperative agreement instrument shall be brief in format, containing only those provisions necessary to protect the fundamental interests of the Government. To ease compliance problems within universities and nonprofit institutions, grants issued by all NASA installations are identical in format and printed content, and changes in grant requirements are made as infrequently as possible.

(b) In order to maintain the distinction between transactions entered into pursuant to section 203(c)(5) and other provisions of the Space Act of 1958 (such as patent licenses, out-bailments, reimbursable launch agreements, and international agreements) and cooperative agreements entered into pursuant to Pub. L. 97-258, the term "cooperative agreement" shall not be used to designate those agreements entered into under the Space Act but shall be used only to designate those cooperative agreements entered into pursuant to Pub. L. 97-258. Loans of Government personal property not associated with a contract, grant, or cooperative agreement under Pub. L. 97-258, and made under the Space Act of 1958, should be consummated as loan agreements under paragraph 1.211 and Part 3.400 of NHB 4200.1, "Equipment Management Manual."

(c) As set forth in § 1260.203(b), an initial determination shall be made by the technical office sponsoring the requirement of the appropriate instrument. Where that technical office recommends that a grant or cooperative agreement be used as the research instrument for supporting an unsolicited proposal, it shall prepare a "Justification for Acceptance of an Unsolicited Proposal". (See § 1260.202(b)(5).) The justification shall be in reasonable detail, shall adequately support the recommendation to award either a grant or cooperative agreement, and shall be approved by a responsible official designated for this purpose by the head of the program office concerned at Headquarters or field installation. In those instances where the transaction does not arise from an unsolicited proposal, the technical office involved shall, in the procurement request, justify any recommendation to the grants officer for award of a grant or cooperative agreement, subject to the approval required above. The grants officer shall review the recommendations of the cognizant technical office and, upon concurrence therein, shall prepare and sign a statement prior to the award of each grant or cooperative agreement which justifies the use of such instrument under Pub. L. 97-258. The statement shall be placed in the official file maintained for the transaction. General Counsel should be consulted on questions of unique requirements and where additional assistance is otherwise determined to be necessary.

(d) Grants and cooperative agreements subject to Pub. L. 97-258 shall cite 31 U.S.C. 6304 or 31 U.S.C. 6305, as applicable, as the authority for their placement. Contracts shall cite the applicable authority contained in the FAR or the NFS.

(e) *Exception and deviations.* (1) 31 U.S.C. 6303 allows the use of contracts "whenever an executive agency determines in a specific instance that the use of a type of procurement contract is appropriate." This provision accommodates situations in which an agency determines that specific public needs can be satisfied best using the procurement process. However, because the provision, if misused, could allow agencies to circumvent the criteria for use of procurement or assistance instruments, use of this authority is restricted to extraordinary circumstances, and only with prior approval of the Assistant Administrator for Procurement. (Deviations from policies and procedures shall be processed under NFS, 48 CFR 1801.4 or § 1260.106 of this part, as appropriate.)

(2) It is NASA's policy that nonmonetary (zero dollar) grants or cooperative agreements shall not be used (except for no-cost time extensions).

§ 1260.302 Format.

NASA Form 1463, "Research Grant Award," NASA Form 1562, "Cooperative Agreement," and NASA Form 1463A, "Provisions for Research Grants and Cooperative Agreements," shall be used for the award of all NASA research grants and cooperative agreements pursuant to Pub. L. 97-258. Special conditions, if required by § 1260.420, shall be placed on the reverse of Form 1463, Form 1562 or on a separate page. In all instances, the heading, "Special Condition(s), Grant (Cooperative Agreement) N——", shall be used, followed by only the applicable special condition(s). Use of pre-printed checklists containing all special conditions or a separate page for each special condition is not authorized.

[51 FR 2626, Jan. 17, 1986, as amended at 54 FR 43051, Oct. 20, 1989]

§ 1260.303 Allowable costs.

(a) OMB Circular A-21, "Cost Principles for Educational Institutions," OMB Circular A-122, "Cost Principles for Nonprofit Organizations," and OMB Circular A-110, "Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations" govern the allowability of costs chargeable to research supported by NASA under grants and cooperative agreements. Regulations governing procurement contracts generally are not appropriate for application to grants and cooperative agreements.

(b) NASA normally allows full recovery of indirect expenses, but in no case shall an overhead rate used for determining grant or cooperative agreement amounts exceed, in equivalence, the most recent overhead rate at the recipient institution for comparable research contracts of the Government.

(c) Grant amounts determined at the time of the award shall not be reduced other than in case of revocation or in the event grant funds are not committed by the grantee prior to completion of the research involved.

(d) It is the responsibility of the recipient to manage the granted funds in such a manner that they cover the full period of the grant or cooperative agreement. NASA is not obligated to reimburse over-expenditures. However, this stricture does not preclude acceptance of a proposal requesting supplemental funding to extend the research.

§ 1260.304 Cost sharing.

(a) *General.* (1) In implementing the statutory requirement appearing in various NASA Appropriations Acts for cost sharing of research resulting from unsolicited proposals, NASA has, in the past, generally required that educational institutions share in the cost of such research. This requirement was derived from the understanding that there was generally extant a "mutuality of interest" (as that phrase appears in the statutes) in such relationships thereby bringing into play the cost-sharing requirement.

(2) Subsequent to Congressional concern on overly strict application of the cost sharing requirement, a NASA reevaluation resulted in a determination that the activities of educational institutions under NASA research grants, cooperative agreements and contracts do not generally produce benefits that can be measured as having significance apart from the benefit intrinsic in the conducting of research for NASA. Therefore, in such instances, these agreements should not be subject to the cost-sharing requirement.

(3) If, in an individual case, cost-sharing is determined to be applicable pursuant to the NASA policy set forth in NFS, 48 CFR 1816.303, the procedures therein shall be followed, and the special condition clause for cost sharing set forth below shall be used.

(b) *Clause.* In grants and cooperative agreements to which cost sharing is applicable, the following clause shall be appended as a special condition:

COST SHARING (JANUARY 1981)

The Grantee agrees to share in the cost of the research by charging to the Government not more than —— per cent of the costs of performance determined to be allowable in accordance with paragraph 405 of the NASA Grant and Cooperative Agreement Handbook. The remaining —— per cent, or more, of the allowable costs of performance so determined will constitute the Grantee's share and will not be charged to the Government under this grant or under any other grant or contract (including allocation to other grants or contracts as part of an independent research and development program). The Grantee will maintain records of all grant costs claimed by the Grantee as constituting part of its share and such records shall be subject to audit by the Government.

§ 1260.305 Long term stability.

(a) *General.* Research performed under grants and cooperative agreements tends to be long term. Stability of support is an important factor in achieving the most effective use of resources. Therefore, it is NASA policy to provide stability for research projects of a continuing nature by suitable long-term funding arrangements and timely renewal. Techniques for promoting stability follow.

(b) *Continuing awards*—(1) *Definition.* A continuing award is a grant or cooperative agreement for which NASA obligates funds to support an effort for a 1-year period, and states an intention to support approximate levels of effort for an additional period of time provided funds are available and the results achieved warrant further support within the context of agency programs.

(2) *Duration and funding.* Continuing awards will normally be approved by the relevant Headquarters Program Office or center for periods not in excess of 3 years. Legal, along with concomitant fiscal obligations, however, will be entered into for periods of 1 year. The award instrument will contain the following special condition which provides an estimate of an approximate level of funding for each of the following years:

CONTINUING AWARD (JULY 1984)

This is a continuing award. Contingent on the availability of funds, scientific progress of the project, and continued relevance to NASA programs, NASA anticipates continuing support at approximately the following levels:

Second year $ _____ Third year $ ____

It is the responsibility of the awardee to request such continued support by submitting a brief proposal.

(The phrase "Third year" will be omitted if inapplicable)

The above special condition is not to be used in multiple-year, including step-funded, awards.

(3) *Proposals and review.* The original proposal and its scientific evaluation is applicable to the entire period. Thus, neither an extensive new proposal nor new reviews are required for subsequent funding in the approved period, unless a special need for new reviews is indicated by monitoring of the project and of its reports, by major changes in the project or senior investigators, by the introduction of work outside the scope of the approved proposal, or by the need for substantial additional funding than that initially anticipated.

(4) *Requests for continued support.* A brief renewal proposal is required, as described in the special conditions of the award instrument for additional funding. Investigators shall be encouraged to contact the NASA technical officer for the project prior to proposal preparation to determine the amount of information required. An additional extended period may be proposed, upon the expiration of the approved period. A complete, new proposal, subject to full review, must be submitted for this purpose. If otherwise acceptable, NASA, at its option, may fund the proposal through a further continuing award or by a standard year-to-year agreement, if long-term effort is no longer anticipated.

(5) *Levels of continued support.* Normally, each year of a continuing award will be funded at the approximate level indicated in the original award instrument, subject to satisfactory scientific progress, availability of funds, and continued relevance to NASA programs. This is not, however, a binding commitment as changing NASA program constraints and developments within the project itself may dictate adjustments in the originally anticipated level.

(6) *Programmatic procedures.* Procurement request initiators who desire to use the continuing award technique should include in their procurement justification packages a brief statement requesting the use of the continuing award, including the expected levels for future periods.

(7) *Other conditions.* Except as noted above, all regulations, terms, and guidelines applicable to regular grants and cooperative agreements apply to continuing awards.

(c) *Step funding*—(1) *Description of step funding.* A step funded research project is one for which funds are obligated over a 3-year period. In addition to full support for the first year's effort, funds are also obligated for a second year's operation at approximately two-thirds of the first year level, and for third year's effort at approximately one-third of the first year level. The typical funding schedule anticipates a continuation of the initially established levels in subsequent years, but this is not always the case—planned increases or decreases in level may be projected in advance. In any event, the full amount required to establish the desired steps must be obligated. (See Step Funding Illustration-Exhibit E.)

(2) *Procedures.* The documentation will clearly indicate that the step funding is appropriate and provide a suggested step schedule accommodating both the previously obligated and the new funding. Annual levels should be rounded to the nearest $1,000, where feasible. Annual continuation proposals should project the contemplated effort for 3 years in advance. Wherever possible, renewal or notification to the grantee that further support will not be forthcoming will be issued before the authorized level drops to the next lower step. Normally, step funded grants should not be allowed to expire if the total period of performance is less than 5 years. Except in cases of revocation, funds should not be de-obligated from the steps. Do not make "No Cost-time Extensions" to step-funded awards, except when they are in the last year and no additional obligations are planned. Annual funding dates may be changed, if necessary, by appropriately rescheduling the steps. The award instrument shall contain the following special condition for step funding.

STEP FUNDING (JULY 1984)

This is a step funded grant. If the total amount allowed by the schedule on the face of the grant is not expended during the applicable period, the residual funds may be expended during the succeeding period. This carryover shall be brought to the attention of the Grants Officer when the Grantee submits its budget for the subsequent period.

(d) *Continuity*—(1) *Period.* To reduce paperwork burdens on the public and to ensure maximum continuity, successive short periods of funding for less than 12 months should not be used except when absolutely necessary (e.g., when the alternative is disruption or cessation of the effort).

(2) *Continuations.* Grants and Cooperative Agreements will be renewed, if appropriate, prior to the instrument expiration date whenever possible. Although the procuring office has little control over the timely receipt of purchase requests, the procuring office is responsible for informing the technical officers on a timely basis of current lead-time requirements and for timely processing continuation agreements. Alternatively, if a grant is not to be renewed, the grantee should be given a minimum of 4 months advance notice of pending close-out (see § 1260.514(a)).

(3) *Instrument usage.* To eliminate the paperwork burdens associated with the close-out of a grant and negotiation of a new award for continuing the same efforts, ongoing efforts at the same institution will be continued by amending or supplementing the current instrument unless (i) there is a significant change in the nature of the work or the main investigators or (ii) if a new instrument is required as a matter of sound procurement practice. If a new instrument must be issued, the period of performance should be continuous with the previous award.

[51 FR 2626, Jan. 17, 1986, as amended at 54 FR 43051, Oct. 20, 1989]

§ 1260.306 Numbering of instruments.

(a) *Grants.* (1) The identification numbering system for all research grants shall conform to NFS, 48 CFR 1804.7102-3, except that a NAG prefix shall be used in lieu of the NAS prefix. The prefix designation shall include the Center Identification Number; e.g., NAGW would be the Headquarters prefix designation and NAG5 would be the Goddard prefix designation. Grants will be sequentially numbered beginning with "1."

(2) Sequential numbers for new Training (NGT) and Facilities (NGF) grants, if the award is otherwise authorized, are assigned by the Office of External Relations, Educational Affairs Division (Code XE).

(b) *Cooperative agreements.* The numbering system for cooperative agreements shall be the same as for § 1260.306(a) (1) and (2), except that NCC (for centers) and NCCW (for Headquarters) prefixes shall be used in lieu of the NAG and NAGW prefixes.

[51 FR 2626, Jan. 17, 1986, as amended at 54 FR 43051, Oct. 20, 1989]

§ 1260.307 Distribution of grants, cooperative agreements, and grant supplements.

Distribution of grants, cooperative agreements and grant supplements shall be made by the initiating office in accordance with its requirements, except that in all cases:

(a) At least one copy will be furnished to paying offices in order to support the payment file and shall be retained for audit purposes in accordance with § 1260.308.

(b) One copy, plus a copy of the grantee's proposal, will be furnished to the NASA Scientific and Technical Information Facility, P.O. Box 8757, BWI Airport, MD 21240. Attn: Acquisitions.

[51 FR 2626, Jan. 17, 1986, as amended at 54 FR 43051, Oct. 20, 1989]

§ 1260.308 Retention of documents for on-site audit.

NASA's grants, cooperative agreements, and grant supplements designated in § 1260.307 are subject to on-site audit by the General Accounting Office. The original or a signed copy of each document, with supporting data, shall be retained by the installation to be available to the General Accounting Office for audit purposes. Records shall be retained for 3 years after completion.

§ 1260.309 Requirement for this part.

Proper administration of NASA grants and cooperative agreements requires that the recipents have access to this part because the grant provisions incorporate by reference part 1260 material on foreign travel, financial management, equipment and property, procurement standards and patent rights. Therefore, the following statement shall be included in or accompany letters transmitting grant and cooperative agreement instruments or supplements:

Proper administration of this award requires access to the current edition of the NASA Grant and Cooperative Agreement Handbook (NHB 5100.1), which is referenced in the award provisions. The Handbook, including running changes, is available only on a purchased subscription basis from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

A subscription price should not be quoted, as it is set by GPO, not NASA and is subject to change.

§ 1260.310 Program income.

For conferences and awards in which there is high potential for the generation of income (other than royalties from patents or copyrights), the following special condition may be used (except with institutions participating in the Federal Demonstration Project):

PROGRAM INCOME (JUNE 1989)

Program income shall be retained by the grantee and shall be * * *

(Complete the sentence with one of the following phrases, as appropriate:

* * * added to funds already committed to the project and used to further project objectives.

* * * used to finance the non-Federal share of the program.

* * * deducted from the total project costs in determining the net costs on which NASA's share of costs will be based.)

[54 FR 43052, Oct. 20, 1989]

Subpart 4—Research Grant and Cooperative Agreement Provisions

§ 1260.400 General.

The provisions set forth in this subpart shall be inserted in and made a part of all NASA grants and cooperative agreements subject to this part. Whenever the words "grant" or "Grantee" appear in these provisions, they shall be deemed to include, as appropriate, the words "cooperative agreement" and "recipient of cooperative agreement" respectively.

§ 1260.401 Technical reports and publications.

TECHNICAL REPORTS AND PUBLICATIONS (APRIL 1984)

(a) All measurement values employed in technical reports prepared under this grant shall be expressed in the International System of Units (SI). Expression in both SI units and customary units is acceptable where the use of SI units alone would obviously impair communications or reduce the usefulness of the report to the primary recipients. When both systems of units are used, SI units are to be stated first and customary units afterwards in parentheses. In each such case, the report shall state which system of units was used for the principal measurements and calculations.

(b) Publication to accomplish widest practicable and appropriate dissemination of research results is encouraged at any time during the course of the investigation. Examples of appropriate media for such dissemination are the learned journals, the proceedings of professional groups, conference presentations, and NASA scientific and technical publications. NASA Grantees may submit the results of their work for publication by whichever media they feel most appropriate. Publications and reports prepared under a grant shall contain a statement which acknowledges NASA's support and identifies the grant by number. Submissions for NASA scientific and technical publications shall be accompanied by manuscripts provided initially in draft. Upon agency review and approval, a reproducible copy shall be submitted in the style and format specified by NASA.

(c) Copies of preprints or manuscripts of each publication shall be provided to NASA for information at the time of submission for publication. Prior approval for publication is not required unless security classification is involved or the grant contains special conditions pertinent to publication of results. Should the preprint or manuscript contain a description of a "Subject Invention," such invention is to be disclosed to NASA as required by the "Patent Rights—Retention by Grantee" provision.

(d) Brief, informal Semiannual Status Reports, which shall include concise statements of the research accomplished during the report period, including full bibliographic references to, or abstracts of, publications, shall be submitted. This is a minimum reporting requirement, and Grantees are urged to submit interim reports to publish in the open literature or to present conference papers whenever the research has reached a point where it is logical to summarize the results, a research phase has been completed, or significant new findings are made.

(e) A final technical report will be submitted upon termination of support under a specific grant, whether or not support is continued under another grant number. The final report may be a comprehensive report of all research findings, suitable for printing as a permanent contribution to knowledge, or it may be a brief summary of the entire project. In either case, cumulated bibliographic references to, or abstracts of, all publications issued during the course of the research shall be included.

(f) Status and final technical reports shall have a title page that displays the title of the grant, the type of report, the name of the Principal Investigator, the period covered by the report, the name and address of the Grantee's institution, and the grant number.

(g) Five copies of all preprints, reprints, manuscripts, status and interim reports, and the final technical report shall be submitted to NASA. Three of these copies shall be sent to the NASA Technical Office designated on the cover page of the grant. The remaining two copies, one of which shall be of a quality suitable for microreproduction, shall be sent to: NASA Scientific & Technical Information Facility, P.O. Box 8757, Baltimore/Washington International Airport, Maryland 21240.

(h) In the event any status, interim, or final technical report submitted to NASA contains information describing a "Subject Invention" for which the Grantee has elected or may elect title, NASA will use reasonable efforts to delay public release by NASA or publication by NASA in a NASA technical report series, up until 6 months from the date of receipt, in order for a patent application to be filed *provided* that the Grantee identify the information and the "Subject Invention" to which it relates at the time of submittal.

§ 1260.402 Extensions.

EXTENSIONS (JANUARY 1981)

(a) It is NASA policy to provide maximum possible continuity in funding grant-supported research, and grants may be extended for additional periods of time. Any extension requiring additional funding must be supported by an unsolicited proposal submitted at least 4 months in advance of the expiration date of the grant. The period of performance shown in the grant documents is approximate, but extension for more than 30 days must be requested by application to the Grants Officer and approved in writing.

(b) When a grant is a continuing award or step funded, NASA will, if circumstances permit, make available additional funding to extend the period. The step funding is based on unsolicited proposals received prior to the completion of each year of full support. NASA shall be the sole judge of whether circumstances will permit this increase. This statement of policy should not be taken as a commitment by NASA.

§ 1260.403 Revocation and change in principal investigator.

REVOCATION AND CHANGE IN PRINCIPAL INVESTIGATOR (AUGUST 1982)

It is a condition of each grant that it may be revoked in whole or in part by NASA after consultation with the Grantee. In the event of revocation, the Grantee shall refund to NASA any unexpended funds that it has received under the grant, except such portion thereof as may be required by the Grantee to meet commitments which had in the judgment of NASA become firm prior to the effective date of revocation and are otherwise appropriate. Significantly reduced availability of the services of the principal investigator(s) named in the grant instrument may be grounds for revocation, unless alternative arrangements are made. The Grantee shall obtain the approval of the NASA Grants Officer to change the principal investigator or to continue the research work during a continuous period in excess of 3 months without the participation of an approved principal investigator.

§ 1260.404 Travel.

TRAVEL (JULY 1984)

(a) Domestic travel is an appropriate charge to research grants, and NASA authorization for specific trips is not required. Expenditures for domestic travel shall not exceed $500 or 25% of the amount allotted for such travel in the approved proposal budget, whichever is greater, without the prior authorization of the NASA Grants Officer.

(b) All foreign travel must be clearly essential to the research effort and must, to be charged to a grant, have the prior approval of the NASA Grants Officer for each specific trip regardless of its inclusion in a proposal budget. Approvals will be made in accordance with the policies and procedures set forth in paragraph 516 of the Grant and Cooperative Agreement Handbook.

§ 1260.405 Allowable costs.

ALLOWABLE COSTS (JULY 1984)

(a) OMB Circular A-21, "Cost Principles for Educational Institutions," OMB Circular

A-122, "Cost Principles for Nonprofit Organizations," and OMB Circular A-110, "Grants and Agreements with Institutions of Higher Education, Hospital and other Nonprofit Organizations," as applicable, govern the allowability of costs chargeable to research sponsored by NASA under Grants and Cooperative Agreements.

(b) Payments to individuals for consultant services under a NASA Grant or Cooperative Agreement shall not exceed the daily equivalent of the maximum rate paid to a GS-18 Federal employee (exclusive of indirect cost, travel, per diem, clerical services, vacation, fringe benefits, and supplies).

§ 1260.406 Financial management.

FINANCIAL MANAGEMENT (APRIL 1987)

(a) *Payment.* Advance payments by the Letter-of-Credit-Treasury Financial Communications System or Direct Treasury Check method will be made in accordance with procedural instructions furnished to the grantee by the Financial Management Office of the NASA installation which issued the grant. The grantee shall submit Federal Cash Transaction Reports (SF 272) to the aforementioned office within 15 working days following the end of each Federal fiscal quarter, containing current estimates of the cash requirements for each of the four months following the quarter being reported.

(b) Management. The Grantee's financial management system shall meet the standards set forth in paragraph 511 of the NASA Grant and Cooperative Agreement Handbook.

(c) Records. Financial records, supporting documents, statistical records, and all other records (or microfilm copies) pertinent to this grant shall be retained for a period of 3 years, except that (1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved, and (2) Records for nonexpendable property acquired with grant funds shall be retained for 3 years after its final disposition. The retention period starts from the date of the submission of the final Federal Cash Transactions Report (SF 272). The Administrator of NASA and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any pertinent books, documents, papers, and records of the Grantee and of subrecipients to make audits, examinations, excerpts, and transcripts. All of the foregoing provisions shall apply to any subrecipient performing substantive work under this grant.

[51 FR 2626, Jan. 17, 1986, as amended at 52 FR 12378, Apr. 16, 1987]

§ 1260.408 Equipment and other property.

EQUIPMENT AND OTHER PROPERTY (MARCH 1981)

(a) NASA research grants permit acquisition of technical property required for the conduct of research. Acquisition of property costing in excess of $1,000 and not included in the approved proposal budget requires the prior approval of the NASA Grants Officer unless the item is merely a different model of an item shown in the approved proposal budget.

(b) NASA grant funds shall not be used to purchase items such as furniture, furnishings, office equipment or other items of a nontechnical nature; exceptions to this require approval of the NASA Grants Officer and must be fully justified as essential to the research under the grant. Under no circumstances shall grant funds be used to acquire land or any interest therein, to acquire or construct facilities, or to procure passenger carrying vehicles.

(c) Title to equipment purchased with grant funds shall vest in the Grantee unless otherwise provided. The Government reserves the right to require transfer to itself title to items purchased at a cost of $1,000 or more. Such reservation is subject to the conditions of paragraph 505 of the NASA Grant and Cooperative Agreement Handbook.

(d) Title to Government-furnished property (including equipment, title to which has been transferred to the Government pursuant to subparagraph (c) prior to completion of the work) will remain with the Government.

(e) Title to expendable property shall vest in the recipient upon acquisition. If there is a residual inventory of such property exceeding $1,000 in total aggregate fair market value, upon termination or completion of the grant or other agreement, and the property is not needed for any other Federally sponsored project or program, the recipient shall retain the property for use on non-Federally sponsored activities, or sell it, but must in either case, compensate the Federal Government for its share. The amount of compensation shall be computed in accordance with subparagraph 6c, Attachment N to OMB Circular A-110.

(f) The Grantee shall maintain property records and otherwise manage nonexpendable personal property utilized in the performance of this grant in accordance with the provisions of Paragraph 509 of the NASA Grant and Cooperative Agreement Handbook. Grantees will submit annually an inventory listing of Government owned property in their custody to the Grants Officer. Such listings will be as of June 30, will be submitted by July 31, and will reflect the record elements required in Paragraph

509(b)(1) and beginning and ending dollar value totals for the period. Upon completion of the agreement or when the property is no longer needed, the recipient shall notify the Grants Officer, who will provide disposition instructions. The Grants Officer will provide a copy of each annual inventory listing to the NASA installation Financial Management Office upon receipt.

§ 1260.409 Patent rights—retention by the grantee.

PATENT RIGHTS—RETENTION BY THE GRANTEE (APRIL 1984)

(a) The disposition of rights to inventions made in the performance of work under this grant will be made in accordance with Pub. L. 96-517 (94 Stat. 3019, 35 U.S.C. 200 et seq.) and NASA's implementing regulations, Exhibit G. The provisions (clause), entitled "Patent Rights—Retention by the Grantee" is set forth as Exhibit G of the NASA Grant and Cooperative Agreement Handbook, and is hereby made applicable to this Grant. The Grantee shall include an appropriate patent rights provision in accordance with paragraph (g) of Exhibit G in all subcontracts.

(b) All disclosures of Subject Inventions, election of rights, utilization reports, and other reports and information required by the aforementioned "Patent Rights" clause shall be submitted to the Grants Officer, with a copy to the Installation Patent Counsel. Copies of status and final reports bearing on patent matters shall also be sent to the Installation Patent Counsel.

§ 1260.410 Rights in data.

RIGHTS IN DATA (JANUARY 1981)

The Grantee grants to the Government, for Governmental purposes, the right to publish, translate, reproduce, deliver, use and dispose of, and to authorize others to do so, all data, including reports, drawings, blueprints, and technical information resulting from the performance of work under this grant.

§ 1260.411 Security.

SECURITY (JANUARY 1981)

Normally, NASA research grants do not involve classified defense information. However, if information is sought or developed by the Grantee that should be classified in the interests of national security, the NASA Grants Officer that issued the grant shall be notified immediately.

§ 1260.412 Civil rights.

CIVIL RIGHTS (OCTOBER 1983)

Work on NASA Grants is subject to the provisions of Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352; 42 U.S.C. 2000d-1), Title IX of the Education Amendments of 1972 (20 U.S.C. 1680 *et seq.*), section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*), and the NASA implementing regulations (14 CFR 1250).

§ 1260.413 Safety.

SAFETY (JANUARY 1981)

(a) The Grantee shall act responsibly in matters of safety and shall take all reasonable safety measures in performing under this grant. The Grantee shall comply with all applicable Federal, State, and local laws relating to safety. The Grantee shall maintain a record of, and will notify the NASA Grants Officer of any accident involving death, disabling injury or substantial loss of property. The Grantee will advise NASA of hazards that come to its attention as a result of the work under the grant through routine status reports furnished in compliance with the Grant.

(b) Where the work under this grant involves flight hardware, the hazardous aspects, if any, of such hardware will be identified, in writing, by the Grantee. Compliance with the provisions of this clause by subcontractors shall be the responsibility of the Grantee.

§ 1260.414 Subcontracts.

SUBCONTRACTS (AUGUST 1982)

(a) Approval of subcontracts for the purchase of property or equipment under this grant shall be obtained in accordance with the provision herein entitled "Equipment and other Property." All other subcontracts not provided for in the approved proposal budget require the prior consent of the Grants Officer.

(b) In accordance with the Small Business Amendments, Pub. L. 95-507, small and disadvantaged firms shall be utilized as subcontractors to Grantees to the maximum extent.

§ 1260.416 Communications.

COMMUNICATIONS (JULY 1984)

The Principal Investigator may expect to be contacted by the NASA Technical Officer named on the cover page of the Grant in connection with the research aspects of the work under the grant. Inquiries regarding the research aspects of the grant should be directed to the NASA Technical Officer. However, written or oral communications of an administrative nature, such as approval of foreign travel, property matters, patent matters, extension of the term of the grant, etc., shall be channeled through the Grantee's business office to the Grants Officer, unless otherwise specified by the Grants Officer.

§ 1260.417 Clean air-water pollution control acts.

CLEAN AIR-WATER POLLUTION CONTROL ACTS (JULY 1984)

If this grant or supplement thereto is in excess of $100,000, the Grantee agrees to notify the Grants Officer promptly of the receipt, whether prior or subsequent to the Grantee's acceptance of this grant, of any communication from the Director, Office of Federal Activities, Environmental Protection Agency (EPA), indicating that a facility to be utilized under or in the performance of this grant or any subgrant or subcontract thereunder is under consideration to be listed on the EPA "List of Violating Facilities" published pursuant to 40 CFR 15.20. By acceptance of a Grant in excess of $100,000, the Grantee:

(a) Stipulates that any facility to be utilized thereunder is not listed on the EPA "List of Violating Facilities" as of the date of acceptance;

(b) Agrees to comply with all requirements of section 114 of the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.* as amended by Pub. L. 91-604) and section 308 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.* as amended by Pub. L. 92-500) relating to inspection, monitoring, entry, reports and information, and all other requirements specified in the aforementioned sections, as well as all regulations and guidelines issued thereunder after award of and applicable to the grant; and

(c) Agrees to include the criteria and requirements of this clause in every subgrant or subcontract hereunder in excess of $100,000, and to take such action as the Grants Officer may direct to enforce such criteria and requirements.

§ 1260.418 Procurement standards.

PROCUREMENT STANDARDS (JANUARY 1981)

The Grantee's procurement practices shall meet the standards set forth in paragraph 512 of the NASA Grant and Cooperative Agreement Handbook.

§ 1260.419 Additional provision for cooperative agreements.

With respect to cooperative agreements under Pub. L. 97-258, it has been determined that the NASA guidelines and regulations applicable to grants will apply to cooperative agreements. The Cooperative Agreements, NASA Form 1562 (see Exhibit C), shall contain a special provision stating the nature of the recipient/NASA interaction in accordance with Pub. L. 97-258. That special provision is as follows:

COOPERATIVE AGREEMENT SPECIAL PROVISION (OCTOBER 1983)

(a) This award is a Cooperative Agreement as it is anticipated that there will be substantial NASA involvement during performance of the effort. That is, the recipient can expect NASA collaboration or participation in the management of the project.

(b) NASA and the recipient mutually agree to the following statement of anticipated cooperative interactions which may occur during the performance of this effort.

(Insert here a concise statement of the exact nature of the cooperative interactions. (See § 1260.203(b) for guidance). In addition, note that the statement must deal with existing facts and not contingencies. Under no circumstances shall the statement be used as a work statement or an expanded grant title.)

§ 1260.420 Special conditions.

(a) In addition to the general provisions set forth in this Subpart, NASA grants and cooperative agreements are subject to various conditions which either are not applicable to all awards or are temporary in nature. Such conditions are not printed in NASA Form 1463A, "NASA Provisions for Research Grants and Cooperative Agreements" (Exhibit D), but are appended to specific grants, as applicable, in the format set forth in § 1260.302.

(b) The following special conditions clauses are authorized under the conditions set forth in the prescribing sections.

INVENTION REPORTING AND RIGHTS—FOREIGN, prescribed at § 1260.209(b).

COST SHARING, prescribed at § 1260.304(3)(b).

CONTINUING AWARD, prescribed at § 1260.305(b)(2).
STEP FUNDING, prescribed at § 1260.305(c)(2).
REPORTS SUBSTITUTION, prescribed at § 1260.605(a).
PROGRAM INCOME, prescribed at § 1260.310.

(c) All clauses inserted as "Special Conditions" shall be written out in full. Clauses shall not be incorporated by reference.

(d) Contemplated special conditions clauses which are not included in, or which differ in language from, the clauses referenced in paragraphs (b), (e), and (f) of this section, shall be considered as deviations and processed in accordance with § 1260.106.

(e) The following provision shall be appended to all grants and cooperative agreements as a special condition, pending its inclusion in NASA Form 1463A, NASA Provisions for Research Grants and Contracts:

INTEREST BEARING ACCOUNTS (APRIL 1987)

Advances of Federal funds shall be maintained in interest bearing accounts. Interest earned on Federal advances deposited in such accounts shall be remitted to NASA promptly, but at least quarterly, as instructed by the Financial Management Office of the NASA installation which issued the grant. Interest amounts up to $100 per year may be retained by the recipient for administrative expense.

(f)(1) The following provision shall be appended to all grants and cooperative agreements as a Special Condition.

(2) The grants officer is authorized to, and shall, upon request of an awardee institution, issue a letter agreement making the special condition immediately applicable to all current grants and cooperative agreements at that institution.

(3) Grantees are hereby offered the opportunity to substitute the final (February 1989) version of the Special Condition "Elimination of Unnecessary Administrative Burden" in all grants for which the interim (July 1988) version is in effect. The first grantee action in accordance with the final version will constitute grantee acceptance of the final version.

(4) Paragraphs (f) (1) and (2) of this section are valid only through December 31, 1989, and the procedures therein shall not be used after that time.

ELIMINATION OF UNNECESSARY ADMINISTRATIVE BURDEN (FEBRUARY 1989)

The following special terms take precedence over NASA Form 1463A, Provisions for Research Grants and Cooperative Agreements and any other requirements in the Grant and Cooperative Agreement Handbook, NHB 5800.1 (14 CFR Part 1260).

(a) *Prior approvals*

(1) General

Cost related and administrative "prior approvals" required by OMB Circulars A-110 and A-21 are hereby waived, except for change in scope or objective and change in principal investigator. Subcontracting approvals are waived except for subcontracting or transferring substantive aspects of the research, if not provided for in the proposal. Other approvals and terms specifically required by the grant still apply, unless waived or modified elsewhere in this Special Condition. The grantee may maintain such internal prior approval systems as it considers necessary.

(2) Travel

The prior authorization requirement in NASA Form 1463A regarding domestic travel expenditures is waived. The costs of foreign travel are allowable charges to the grant provided that the travel is clearly essential to the research effort. Foreign travel to communist areas, foreign travel involving studies of foreign countries, per se, or foreign travel requiring special permits or licenses still requires prior approval by the NASA Grants Officer, unless the travel has been described in an accepted proposal.

(3) Equipment and Other Property

The prior approval requirement for acquiring property not included in the proposed budget is raised to $5,000. For approval purposes, an item of a "nontechnical nature" may be regarded as "technical property " if it is primarily used in and is essential to the actual conduct of the research.

(b) *Preaward costs.* Grantees may approve preaward costs of up to ninety (90) days prior to the effective date of a new award, provided the costs are necessary for the effective and economical conduct of the project and they are otherwise allowable under the terms of the grant. Any preaward expenditures are made at the grantee's risk. Approval by the grantee does not impose any obligations on NASA in the absence of appropriations, if an award is not subsequently made, or if an award is made for a lesser amount than the grantee anticipated.

(c) *No cost extensions.* Grantees may extend the expiration date of a grant or a supplement thereto if additional time beyond the established expiration date is required to assure adequate completion of the original scope of work within the funds already made available. A single extension, which shall not exceed twelve (12) months, may be made for this purpose, and must be made prior to the expiration date. The grantee must notify the grants officer in writing within 10 days of the extension. Absent timely notification, the prior approval requirement (Form 1463A) shall apply.

(d) *Unobligated balances.* Any unobligated balance of funds which remains at the end of any funding period, except the final funding period of the project, shall be carried over to the next funding period, and may be used to defray costs of any funding period of the project. If uncommitted carryover funds are likely to be substantial, the estimated amount shall be included in any continuation proposal.

(g) Effective October 1, 1988, the following provision shall be appended, as a special condition, to all grants and cooperative agreements entered into after that date (pending its inclusion in NASA Form 1463A, Provisions for Research Grants and Cooperative Agreements).

DEBARMENT AND SUSPENSION (OCT 1988)

NASA grants and cooperative agreements, except for those to foreign institutions, are subject to the provisions of 14 CFR Part 1265, Governmentwide Debarment and Suspension (Nonprocurement). The certification required by that regulation must also accompany extension proposals.

(h) The following provision shall be appended, as a special condition, to all grants and cooperative agreements (pending revisions to § 1260.409 and NASA Form 1463A, Provisions for Research Grants and Cooperative Agreements):

PATENT RIGHTS—CORRECT CITATIONS (JUNE 1989)

In the NASA Provisions for Research Grants and Cooperative Agreements (NASA Form 1463A), the correct statutory citations in the "Patent Rights—Retention by Grantee" provision are "Chapter 18 Title 35, United States Code (Pub. L. 95-517, Pub. L. 98-620)."

[51 FR 2626, Jan. 17, 1986, as amended at 52 FR 12378, Apr. 16, 1987; 53 FR 29328, Aug. 4, 1988; 53 FR 38286, Sept. 30, 1988; 54 FR 9427, Mar. 7, 1989; 54 FR 43052, Oct. 20, 1989]

Subpart 5—Administration of Research Grants and Cooperative Agreements

§ 1260.501 General.

(a) NASA assumes that, once a grant or cooperative agreement is made, the principal investigator, operating within the policies of the grantee institution, is in the best position to determine the means by which the research may be conducted most effectively. The term "grantee" refers to recipients of both grants and cooperative agreements. NASA wishes to avoid any action that might diminish the responsibility of the grantee and the investigator for making sound scientific and administrative judgments. Grantees and investigators are encouraged to seek the advice and opinions of NASA on problems that may arise. Unless otherwise stated, the giving of such advice should not imply that the responsibility for final decisions has shifted to NASA. The primary concern of NASA is that granted funds be used in a manner that will make a maximum contribution to the scientific area under investigation. It is expected that grantees and investigators will also direct their efforts to this end. Therefore, the grantee may change the methods and procedures employed in performing the research as scientific judgment dictates without the need to obtain NASA approval. However, it is expected that significant changes in methods or procedures will be discussed in the status or technical reports.

(b) The grantee shall obtain the approval of the NASA grants officer to change the principal investigator or to continue the research work during a continuous period in excess of 3 months without the participation of an approved principal investigator.

§ 1260.502 Instrument.

A NASA grant or cooperative agreement is consummated by an instrument signed by the NASA Administrator, or duly authorized representative, and contains the provisions set forth in Subpart 4 of this part.

§ 1260.503 Instrument period.

(a) Normally NASA grants and cooperative agreements are made or extended for periods of 1 to 3 years at a time. Longer periods may be appropriate in some instances, provided step (§ 1260.305(c)) continuing (§ 1260.305(b)) or full funding is used. Any other arrangements in which there is not at least partial funding throughout the period of performance are prohibited. Short periods should be avoided as noted in § 1260.305(d)(1). As stated in the instrument, the period is approximate; the beginning and ending dates are not specified with precision. The instrument period begins approximately on the date thereof and extends for approximately the length of time specified. However, when progress of research under the grant or cooperative agreement is delayed and circumstances make it necessary to request an extension of the period without additional funds, the policy of NASA is to permit extensions in time, upon written request.

(b) When it appears that the research contemplated will be completed within 30 days after the approximate ending date, a request for extension of the instrument period will be unnecessary. If it appears, however, that the additional time required for completion of the research will exceed 30 days, a request for extension must be made by the grantee. Any extension requiring additional funding must be supported by an unsolicited proposal and submitted at least 4 months in advance of the expiration date of the grant or cooperative agreement.

§ 1260.504 Adherence to original budget estimates.

(a) NASA believes that the principal investigator, operating within the established policies of the grantee, is the individual best qualified to determine the manner in which the grant or cooperative agreement funds may be used most effectively to accomplish the proposed research. Although NASA assumes no responsibility for overspent budgets, the investigator and the grantee institution are free to spend grant or cooperative agreements funds for the proposed research without strict adherence to individual allocations within total budgets, except as provided in §§ 1260.404 and 1260.408. Under no circumstances, however, may grant or cooperative agreements funds be used to acquire land or any interest therein, to acquire or construct facilities or to procure passenger carrying vehicles. Purchase of furniture, furnishings, office equipment, or other items of a nontechnical nature require the prior approval of the NASA grants officer as provided in § 1260.408.

(b) Controls and limitations on expenditures for specific items under NASA grants or cooperative agreements shall be in accordance with the provisions of § 1260.405.

(c) If any of the actions requiring approval in accordance with § 1260.405 of this part have received specific NASA approval during the proposal and award process, a further approval shall not be required. Whenever practical, the approvals shall be given at the time of the project award or extension to avoid any delays during the course of the project.

(d) Approval requirements relating to expenditures under grants and cooperative agreements, in addition to those provided for in § 1260.405, shall not be imposed except in accordance with the deviation procedure of § 1260.106 or as specifically required by statute.

§ 1260.505 Use, disposition, and vesting of title to research equipment.

(a) *Background.* (1) Support of research in educational institutions provides substantial long-term and indirect benefits, as well as the immediate research results. In addition to the obvious academic advantages of such support, individual and institutional capabilities to perform relevant research are enhanced, and the number of scientists and graduates with research interests in areas of concern to the nation generally, and to NASA in particular, is increased. Adequate modern research equipment in universities serves to maximize these direct and supplemental benefits.

(2) NASA funds research in academic areas in which the university has, and expects to maintain, a capacity for research and education. The research

equipment that it acquires has, therefore, an especially high potential for continuing effective use at the acquiring institution. The legitimate interest of both NASA and the university, as well as the long-term national interest, require that any decision by the agency to take title for the purpose of transferring grantee equipment to another location reflect careful consideration of all relevant factors. This should include comparison of the expected beneficial use at the present location with that expected at the new location possible deleterious effects of removal, and the administrative and relocation costs involved.

(b) *Policy.* The following policies will be reflected, as appropriate, in the negotiation and the documentation of NASA research grants, cooperative agreements and supplements thereto and in related correspondence.

(1) Title to equipment purchased with grant and cooperative agreement funds vests in the grantee institution, and the equipment does not automatically follow the principal investigator when he or she leaves the institution. Title to Government-furnished equipment remains with the Government. In accordance with Pub. L. 94-519, NASA policy is not to furnish acquired excess property to grantees as NASA would in such event have to pay 25% of the original acquisition cost of the equipment to the Treasury. In the event application of this policy proves to be extremely disadvantageous to NASA in a specific situation, a deviation may be requested (§ 1260.106). When Government-furnished equipment is reported excess by a grantee, the grants officer will report the equipment to the installation property disposal officer for further NASA use. If NASA has no further need for the property, it shall be declared excess and reported to the General Services Administration. Appropriate disposition instructions will be issued to the recipient after completion of the Federal-wide review.

(2) NASA may require transfer to it of title to individual items on coherent systems (paragraph (b)(8) of this section) of major grantee acquired equipment purchased at a cost of more than $1,000 subject to the following conditons:

(i) The equipment shall be appropriately identified to the recipient in writing.

(ii) NASA shall issue disposition instruction within 120 calendar days after the end of the Federal support of the project for which it was acquired. If NASA fails to issue disposition instructions within the 120 calendar day period, the grantee shall apply the standards of subparagraphs 6b and 6c, Attachment N to OMB Circular A-110, as appropriate.

(iii) When NASA exercises its right to take title, the equipment shall be subject to the provisions for federally-owned nonexpendable property discussed in § 1260.408, paragraph (f) of the clause.

(iv) When title is transferred to the Federal Government, the provisions of subparagraph 6c(2)(b), Attachment N to OMB Circular A-110, shall be followed.

(3) Title to minor equipment items (costing individually $1,000 or less) is not subject to transfer to the agency, except under the conditions of paragraph (b)(8) of this section.

(4) NASA procedures does not require a grantee to transfer title to grant or cooperative agreement-acquired equipment directly to another actual or potential grantee or contractor. Such transfers are accomplished by the Government's taking title and issuing the equipment to the second institution as Government-furnished equipment.

(5) NASA normally will not recover equipment that a grantee desires to retain for reissuance to another institution or to a NASA installation, unless it is specifically required for NASA work at the new location. Exceptions will be made only in highly unusual situations where title transfer is clearly in the best interest of the Government.

(6) Cost sharing by NASA and a grantee in the acquisition of individual items or coherent systems (paragraph (b)(8) of this section) of equipment, in response to a statutory requirement for cost-sharing or in any way that could result in joint ownership, shall normally be avoided.

(7) When cost sharing by NASA and a grantee in the acquisition of major equipment items or coherent systems cannot be avoided, and the NASA contribution will exceed $1,000, agreement regarding NASA retention of its option to take title and the conditions under which the option (if retained) will be exercised, shall be reached and documented prior to purchase. NASA shall have no option to take title if its contribution is $1,000 or less.

(8) When two or more components are fabricated into a single coherent system in such a way that the components lose their separate identities and their separation would render the system useless for its original purpose, the components will be considered as integral parts of a single system. If such a system includes grantee-owned components (for cost sharing or other purposes), paragraph (b)(7) of this section applies. The requirement that NASA seek agreement to retain its option to take title shall further apply where it is expected that one or more grant-acquired components costing $1,000 or less will be fabricated into a single coherent system costing in excess of $1,000. However, an item that is used ancillary to a system, without loss of its separate identity and usefulness, will be considered as a separate item and not as an integral component of the system.

(c) *Procedures.* (1) When a decision is made to revoke or discontinue support of a grant or cooperative agreement, the grants officer shall notify the grantee in writing of the requirement under the instrument for submission of a final inventory report of Government-owned equipment.

(2) When the cognizant NASA technical officer or program manager desires that NASA take title to a major item of grantee purchased equipment, the technical officer shall request the grants officer to obtain information regarding the grantee's desire to retain the equipment, the use to which it would be put in the absence of further NASA support of the grant or cooperative agreement, and any substantial deleterious effects of removal of the equipment.

(3) The grants officer shall obtain the information and provide copies to the technical officer and the Headquarters Supply and Equipment Management Branch for their coordinated review and recommendation regarding acquisition of title. The technical officer shall inform the grants officer of the recommendation by means of a memoradum concurred in by the Supply and Equipment Management Branch.

(4) When NASA acquires title to major items of grantee purchased equipment, the grants officer shall notify both the cognizant NASA installation financial management officer and supply and equipment management officer so that proper entries can be made in financial and property accounting records.

§ 1260.506 Revocation.

(a) *Policy.* When a university grant or cooperative agreement is terminated at other than its planned end date, the result can be a significant disruption in the university educational activities. NASA has established excellent relationships with hundreds of universities, including a credibility for responsibly understanding and handling the problems experienced by educational institutions. This has resulted in the retention of highly qualified investigators on NASA work and participation of the most able graduate students. To maintain that credibility, suspension or revocation of grants or cooperative agreements prior to the planned completion date must be reserved for those few exceptional situations which cannot be handled any other way.

(b) *Suspension.* When a grantee has failed to comply with the terms of a grant or cooperative agreement, NASA may, on reasonable notice to the grantee, temporarily suspend the grant or cooperative agreement, withhold further payments, and prohibit the grantee from incurring additional obligations of funds, pending corrective action by the grantee or a decision by NASA to revoke the grant. NASA will allow all necessary and proper costs that the grantee could not reasonably avoid during the period of suspension.

(c) *Revocation.* (1) NASA grants and cooperative agreements may be revoked in whole or in part by NASA after consultation with the grantee, except that a revocation shall not affect any financial commitment which, in the judgment of NASA, had become firm prior to the effective date of the revocation and is otherwise appropriate. Revocation is a right reserved by NASA, which may be exercised at any time, and encompasses actions of a type commonly referred to as "Termination for Cause" or "Termination for Convenience." Upon revocation, the grantee shall reduce, insofar as possible, the amount of outstanding commitments and repay by check made payable to the National Aeronautics and Space Administration, the uncommitted balance of all funds that have been paid to the grantee by NASA under the terms of the particular grant or cooperative agreement.

(2) The grantee shall communicate with NASA whenever it has reason to believe that circumstances may necessitate revocation of the grant or cooperative agreement. The most common cause for revocation would be the inability or failure of the grantee to carry out the research for which the grant or cooperative agreement was made or to adhere to the other conditions set forth in the instrument.

(d) *Principal investigator.* As a general rule, the availability of the services of the principal investigator named in the instrumnet is a decisive factor in NASA's decision to award the grant or cooperative agreement. Consequently, NASA should be informed immediately whenever it appears that the principal investigator will find it impossible to continue to direct the research. (See § 1260.501(b)). Significantly reduced availability of the services of the principal investigator may be grounds for revocation, unless alternative arrangements are made.

(e) *University grants and cooperative agreements.* Before suspending or revoking in its entirety any grant or cooperative agreement with a university, the matter shall be coordinated within NASA as prescribed in NMI 8340.1, "Actions Leading to Decisions to Terminate University Grants and Contracts for the Convenience of the Government".

§ 1260.507 Transfer of grants or cooperative agreements to other institutions.

Awards cannot be transferred from one institution to another. However, when the principal investigator changes his or her organizational affiliation and desires support for the research at a new location, he or she must submit a new proposal via the appropriate officials of the new institution. Although such a proposal will be reviewed in the normal manner, every effort will be made to expedite a decision. Regardless of the action taken on the new proposal, final reports on the original grant or cooperative agreement, describing the scientific progress and expenditure to date, will be required if that instrument is revoked.

§ 1260.508 Delegation of administration.

(a) *Background.* It is often advantageous to the government to consolidate certain grant administration functions in one agency or to have one agency perform functions in behalf of another. Some functions, such as audit and civil rights matters, are handled at the agency level, while other functions require specific delegation on a grant-by-grant basis. This paragraph is concerned with the latter type of function.

(b) *Policy.* Pursuant to government-wide "cross-servicing" policy, it is NASA's policy to delegate property administration and other selected functions to the Office of Naval Research (ONR), subject to limitations and conditions in paragraphs (c) through (e) of this section.

(c) *Procedures.* Delegations will be made in generally the same fashion as delegations for contracts, using NASA Form 1430, "Letter of Contract Administration Delegation, General;" NASA Form 1430A, "Letter of Contract Administration Delegation, Special Instructions;" and NASA Form 1431, "Letter of Acceptance of Contract Administration Delegation." The Grants Officer will inform the grantee in writing that the delegation has been made and provide specific instructions regarding items which shall be sent to ONR in addition to or in variance with existing guidance in this Handbook or the Grant Provisions.

(d) *Types of administration*—(1) *Property administration.* In most instances, practical necessity dictates delegation to ONR of the performance of property administration (review and approval of grantees' property control procedures, and on-site surveys of grantees' property control systems) and plant clearance (screening, redistribution and disposal of Government property from grantees' work sites). Therefore, the Grants Officer will normally delegate these functions for each grant except:

(i) When there will be no government-furnished property or grantee-acquired property, or

(ii) When the work will be performed in the vicinity of the sponsoring NASA installation and ONR administrative services are not reasonably available. Installations will use standard special instruction wording on the Form 1430A, as provided in Exhibit A. Questions related to the delegation of property administration should be posed to the Headquarters Supply and Equipment Management Branch, Code NIE.

(2) *Close-out.* (i) Grant close-out may be delegated to ONR when the grants officer determines that such delegation enables timely close-out, optimizes NASA resources, or is otherwise cost effective. Close-out delegation must be preceded or accompanied by a Property Administration and Plant Clearance Delegation (if any grantee purchased or Government-Furnished property (GFP) is involved. Installations will use standard special instruction wording on the Form 1430A, as provided in Exhibit A, Figure 2. Note that paragraphs 4 (f) and (g) on the Form must be completed for each delegation. Paragraph 4(f) will normally be marked "YES", unless an exception in paragraph (d)(1) of this section, applies.

(ii) Delegations consist of all functions set forth in § 1260.514, except the "final property inventory," which is delegated separately pursuant to paragraph (d)(1), of this section. Delegations may be made at any time, but preferably no later than when the determination to discontinue the effort is made by the technical officer (see § 1260.514(a)). ONR shall obtain the approval of the grants officer prior to initiating close-out. If the delegation is made after the work is completed, the grants officer shall provide ONR with copies of the final reports received. To expedite close-out, grants officers shall timely respond to ONR inquiries, preferably within 30 days. Grants officers shall inform individuals named on Form 1430A, Item 4(g) (A) that a delegation has been made and (B) of the requirement for timely responses to any inquiries received directly from ONR.

(e) *Other functions.* Special situations may arise in which delegation of functions other than property administration or close-out is appropriate. Such cases typically affect a limited number of grants or a single grantee. In rare instances delegation to an agency other than ONR may be in order. Procedural guidance shall be obtained from the Procurement Policy Division prior to making such delegations.

(f) *Conformance.* Existing delegations which vary substantially from the requirements of this § 1260.508 or grants for which no delegations have been made will be brought into conformance by April 1, 1985. After April 1, 1985, ONR is not required to honor nonconforming delegations.

§ 1260.509 Property management standards.

(a) *Definitions.* The following definitions apply for the purpose of this paragraph:

(1) *Real property.* Real property means land, including land improvements, structures and appurtenances thereto, but excluding movable machinery and equipment.

(2) *Personal property.* Personal property means property of any kind except real property. It may be tangible—having physical existance, or intangible—having no physical existance, such as patents, inventions, and copyrights.

(3) *Nonexpendable personal property.* Nonexpendable personal property

means tangible personal property having a useful life of more than 2 years and an acquisition cost of $500 or more per unit. A recipient may use its own definition of nonexpendable personal property, provided the definition would at least include all tangible personal property as defined above. "Equipment" as used in this part, is another term for nonexpendable personal property.

(4) *Expendable personal property.* Expendable personal property refers to all tangible personal property other than nonexpendable personal property.

(5) *Excess personal property.* Excess personal property means any personal property under the control of any Federal agency which is not required for its needs and the discharge of its responsibilities, as determined by the Head thereof.

(6) *Acquisition cost of purchased nonexpendable personal property.* Acquisition costs of an item of purchased nonexpendable personal property means the net invoice unit price of the property, including the cost of modifications, attachments, accessories, or auxiliary apparatus, necessary to make the property usable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty, or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

(7) *Exempt property.* Exempt property means that tangible personal property acquired in whole or in part with Federal funds and title to which is vested in the recipient without further obligation to the Federal Government, except as provided in § 1260.505(b)(2).

(b) Property management standards for nonexpendable personal property. As prescribed by OMB Circular A-110, the recipient's property management standards for nonexpendable personal property shall include the following procedural requirements:

(1) Property records shall be maintained accurately and shall include:

(i) A description of the property.

(ii) Manufacturer's serial number, model number, national stock number, or other identification number.

(iii) Source of the property, including grant or other agreement number.

(iv) Whether title vests in the recipient or the Federal Government.

(v) Acquisition date (or date received, if the property was furnished by the Federal Government) and cost.

(vi) Percentage (at the end of the budget year) of Federal participation in the cost of the project or program for which the property was acquired. (Not applicable to property furnished by the Federal Government.)

(vii) Location, use and condition of the property and the date the information was reported.

(viii) Unit acquisition cost.

(ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates the Federal sponsoring agency for its share.

(2) Property owned by the Federal Government must be marked to indicate Federal ownership.

(3) A physical inventory of property shall be taken and the results reconciled with the property records at least once every 2 years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the property.

(4) A control system shall be in effect to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft of nonexpendable property shall be investigated and fully documented; if the property was owned by the Federal Government, the recipient shall promptly notify the grants officer.

(5) Adequate maintenance procedures shall be implemented to keep the property in good condition.

(6) Where the recipient is authorized or required to sell the property, proper sales procedures shall be established which would provide for competition to the extent practicable and result in the highest possible return.

(c) *Exempt property.* Title to nonexpendable personal property acquired with project funds shall be vested in the recipient upon acquisition unless it is determined that to do so is not in furtherance of the objectives of the Federal sponsoring agency. When title is vested in the recipient, the recipient shall have no other obligation or accountability to the Federal Government for its use or disposition, except as provided in § 1260.505(b)(2).

§ 1260.510 Screening of requests for government-furnished equipment.

(a) Pursuant to NASA NMI 4000.2, "NASA Equipment Utilization," an agencywide Equipment Visibility System (EVS) has been established to identify and effect optimum use and reuse of Government-owned equipment items of high value and reuse potential. The EVS and this paragraph apply only to grantee requests for Government-furnished equipment. Requests for grantee acquired equipment are neither required nor encouraged to be screened through the EVS.

(b) When a grantee requests Government-furnished equipment of $1,000 or more, the grants officer shall screen the item through the installation's EVS coordinator. Screening requests shall list the manufacturer, model number, description, national stock number, estimated cost, and any other information deemed necessary by the EVS coordinator to properly identify the item. Urgent requests may be screened by telephone.

(c) When suitable equipment is located through the foregoing procedures, the holding installation will place a "freeze" on the item for 10 working days, pending shipping instructions. Extension of the freeze period must be requested through the EVS Coordinator if shipping instructions cannot be furnished within the required period. (See paragraph 5.307, NASA Equipment Management Manual, NHB 4200.1.)

§ 1260.511 Standards for grantee's financial management systems.

As prescribed by OMB Circular A-110, "Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organization," the grantee's financial management system shall provide for:

(a) Accurate, current, and complete disclosure of the financial results of the project.

(b) Records that identify adequately the source and application of funds for the grant or cooperative agreement. These records shall contain information pertaining to the award, authorizations, obligations, unobligated balances, assets, outlays, and income.

(c) Effective control over and accountability for all funds, property, and other assets. The grantee shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.

(d) Comparison of actual outlays with obligated amounts for the grant or cooperative agreement.

(e) Procedures to minimize the time elapsing between the transfer of funds from the U.S. Treasury and the disbursement by the grantee. When advances are made by a letter-of-credit method, the grantee shall make drawdowns as close as possible to the time of making disbursements.

(f) Procedures for determining the reasonableness, allowability, and allocability of costs in accordance with the provisions of § 1260.405 of this part and any other terms of the grant or cooperative agreement.

(g) Accounting records that are supported by source documentation.

(h) Examinations in the form of audits or internal audits. Such audits shall be made by qualified individuals who are sufficiently independent of those authorizing the expenditure of NASA funds to produce unbiased opinions, conclusions or judgments. They shall meet the independence criteria along the lines of Chapter 3, Part 3, of the U.S. General Accounting Office publication, "Standards for Audit of Government Organizations, Programs, Activities and Functions." These examinations are intended to ascertain the effectiveness of the financial management systems and internal procedures that have been established to meet the terms and conditions of the agreements. It is not intended that each agreement awarded to the grantee be examined. Generally, examinations should be conducted on an organization-wide basis to test the fiscal integrity of financial transactions, as well as compliance with the terms and conditions of the NASA grants and other agreements. Such tests would include an appropriate sampling of NASA agreements. Examinations will be conducted with reasonable frequency, on a continuing basis or at scheduled intervals, usually annually, but not less frequently than every 2 years. The frequency of these examinations shall depend upon the nature, size, and the complexity of the activity. These examinations do not relieve the cognizant Federal audit agency of its audit responsibilities, but may affect the frequency and scope of such audits.

(l) A systematic method to assure timely and appropriate resolution of audit findings and recommendations.

§ 1260.512 Procurement standards.

As prescribed by OMB Circular A-110, the grantee's procurement practices shall be subject to the following standards:

(a) The grantee shall maintain a code of standards of conduct that shall govern the performance of its officers, employees or agents engaged in the awarding and administration of contracts using NASA funds. No employee, officer, or agent shall participate in the selection, award, or administration of a contract in which NASA funds are used, where, to his or her knowledge, there exists a financial interest on the part of (1) that person, (2) that person's immediate family or partners, or (3) any organization in which that person or an immediate family member or partner has a financial interest or with whom he or she is negotiating or has any arrangement concerning prospective employment. The grantee's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or potential contractors. Such standards shall provide for disciplinary actions to be applied for violation of such standards by the recipients' officers, employees, or agents.

(b) All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The grantee should be alert to organizational conflicts of interest or noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids, or requests for proposals should be excluded from competing for such procurements, except when the grantor agency gives approval to a grantee's request to waive this requirement for a particular procurement. Awards shall be made to the holder/offeror whose bid/offer is responsive to the solicitation and is most advantageous to the grantee—price and other factors considered. Solicitations shall clearly set forth all requirements that the bidder/offeror must fulfull in order for the bid/offer to be evaluated by the grantee. Any and all bids/offers may be rejected when it is in the grantee's interest to do so.

(c) The grantee shall establish procurement procedures that provide for, at a minimum, the following procedural requirements:

(1) Proposed procurement actions shall follow a procedure to assure the avoidance of purchasing unnecessary or duplicative items. Where appropriate, an analysis shall be made of lease and purchase alternatives to determine which would be the most economical, practical procurement.

(2) Solicitations for goods and services shall be based upon a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such a description shall not, in competitive procurements, contain features which unduly restrict competition. "Brand name or equal" descriptions may be used as a means to define the performance or other salient requirements of a procurement and, when so used, the specific features of the named brand which must be met by bidders/offerors shall be specified.

(3) Positive efforts shall be made by the grantee to utilize small and disadvantaged business sources of supplies and services. Such efforts should allow

these sources the maximum feasible opportunity to compete for contracts utilizing NASA funds.

(4) The types of procuring instruments used, e.g., fixed-price contracts, cost reimbursable contracts, purchase orders, incentive contracts, shall be determined by the grantee but must be appropriate for the particular procurement and for promoting the best interest of the program involved. The "cost-plus-a-percentage-of-cost" method of contracting shall not be used.

(5) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources, and accessibility to other necessary resources.

(6) Some form of price or cost analysis should be made in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability, and allowability.

(7) Procurement records and files for purchases in excess of $10,000 shall include the following:

(i) Basis for contractor selection;

(ii) Justification for lack of competition when competitive bids or offers are not obtained;

(iii) Basis for award, cost, or price.

(8) A system of contract administration shall be maintained to ensure contractor conformance with terms, conditions, and specifications of the contract, and to ensure adequate and timely follow-up of all purchases.

(d) The grantee shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. These provisions shall also be applied to subcontracts.

(1) Contracts in excess of $10,000 shall contain contractual provisions or conditions that will allow for administrative, contractual, or legal remedies in instances in which contractors violate or breach contract terms and provide for such remedial actions as may be appropriate.

(2) All contracts in excess of $10,000 shall contain suitable provisions for termination by the grantee, including the manner by which termination will be affected, and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default, as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(3) All contracts awarded by grantees and their contractors or subgrantees having a value of more than $10,000 shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 and as supplemented in Department of Labor regulations (41 CFR Part 60).

(4) All negotiated contracts (except those of $10,000 or less) awarded by grantees shall include a provision to the effect that the grantee, NASA, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to the specific project, for the purpose of making audits, examinations excerpts, and transcriptions.

§ 1260.514 Closeout procedures.

The closeout of a grant or cooperative agreement is the process by which NASA determines that all applicable administrative actions and all required work under the instrument have been completed by the Grantee and NASA. Close-out procedures consist of the following steps:

(a) *Initiation.* As a basis for close-out initiation, the grants officer shall determine from the NASA technical officer that work under a particular grant will not be continued or is completed. Close-out should be initiated within 90 days of this determination. The Grantee will be given advance notification of pending close-out and reminded of the final documentation required. To the extent practicable, such notification will be made prior to the grant's ending date.

(b) *Reports submission.* The grants officer will ensure that all required final reports have been received by the appropriate NASA offices. Specifically:

(1) Final Technical Report (see §§ 1260.401(e)-(g) and 1260.605(b)).

(2) Final Report of Inventions and Subcontracts (see §§ 1260.209(d), 1260.401(c), and 1260.605(b) and Exhibit G(f)(5)).

(3) Final Financial Report (see §§ 1260.406(a), 1260.603 and 1260.605(c)).

(4) Final Property Inventory (see §§ 1260.408(f), 1260.505, and 1260.604). The final reports should normally be obtained within 90 days of completion of the effort; however, NASA may authorize additional time for this purpose.

(c) *Reports certification.* The grants officer will obtain from the appropriate NASA reports recipients' written certification that the above-noted reports are satisfactory and that all actions relating to them have been completed, or will assist a requesting office in achieving this condition. In reviewing the certifications for completeness of actions, note that:

(1) If there are excess funds, the grantee is required (OMB Circular A-110) to immediately refund any balance of unobligated (unencumbered) cash that NASA has advanced or paid. Alternately, NASA shall make prompt payments for any remaining allowable reimbursable costs under the agreement being closed out.

(2) Final audit of NASA grants normally occurs as a part of scheduled overall audits performed by the cognizant audit agency. Therefore, requests for audit of specific grants in conjunction with close-out are generally unnecessary and should be reserved for unusual circumstances. In any event, if a final audit has not been performed prior to the close-out of the grant or cooperative agreement, NASA shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from any subsequent audit.

(3) The property certification should indicate that disposal of any remaining Government property has been made as directed and that NASA has been compensated for any residual inventory (see § 1260.408(c)-(f)). Upon receipt of all four certifications, a grant is considered to be administratively complete. Close-out may be cited as the date the grants officer subsequently documents the file that all actions required by this section and by internal installation procedures have in her or his judgement been satisfactorily completed and that no further actions are necessary.

(d) *Prohibitions.* Forms, procedures, or requirementsts (regardless of modifications) applicable to contracts shall not be used during close-out unless otherwise authorized in this part. Grantees shall not be requested to complete forms or supply information other than normally encompassed in (b), above, except in unusual situations. Any general exception requires a deviation (§ 1260.106).

[51 FR 2626, Jan. 17, 1986, as amended at 52 FR 12379, Apr. 16, 1987]

§ 1260.515 Novation and change of name agreements.

All novation agreements and change of name agreements of the grantee, prior to execution, shall be reviewed by General Counsel for legal sufficiency. FAR/NFS, 48 CFR Subparts 42.12 and 1842.12, shall be followed for general guidance. Where possible, novation is preferable to termination followed by a new award or any other procedure which causes unnecessary paperwork or disrupts on-going research efforts.

§ 1260.516 Foreign travel.

(a) Foreign travel is travel outside of the United States, its territories and possessions, and Canada. For grantees not situated in the aforementioned areas, it is travel outside of the grantee's country.

(b) Prior approval by the grants officer is required for charging the cost of foreign travel to a NASA grant. Review and approval are needed on a case-by-case basis for each specific trip, even when an approved proposal anticipated a foreign travel requirement.

(c) Travel charges may be approved when the travel is clearly in the best interests of NASA. The following criteria shall be observed in considering travel requests:

(1) Foreign travel costs by grantee personnel may be approved and charged to NASA grants for presentation of papers at meetings, conferences, or symposia; participation in meetings, conferences, or symposia as session chairpersons, discussion leaders, special invitees, or official staff members of the sponsoring group; "onsite" field work; and, in exceptionally meritorious cases, visits to scientific or technical organizations and attendance at international conferences when the travel is related to work under a NASA grant.

(2) Foreign travel costs ordinarily will not be approved for the sole purpose of visting or attending meetings, unless fully warranted by clear and recognizable direct benefits to the project; meetings of national (as distinguished from international) bodies, unless the travel is constructively associated with other approved goals, or foreign meetings that are predominantly American in either attendance or presented papers.

(3) NASA normally will pay the cost of foreign travel to present results of NASA-funded studies only if (i) the results have been previously reported to NASA and (ii) the presentation will be before an international conference or symposium having substantial multinational representation. (Where these criteria are not met, see NMI 2220.2.)

(4) Certified air carriers, if available, will be used in adherence with the guidelines of section 5 of the International Air Transportation Act of 1974.

(d) Allowability of foreign travel costs normally will not be contingent on prior review or approval of papers to be presented, unless a special condition which specifically requires such review and approval (see § 1260.420(d)) has been appended to the grant.

(e) The traveler or traveler's organization will be responsibile for the cost of travel for which approval has not been obtained.

(f) The following procedures will be followed:

(1) Requests for foreign travel authorizations under NASA grants are subject to initial consideration by the NASA Technical Officer, to policy overview by the International Affairs Division, and to approval by the grants officer.

(2) It is the responsibility of the Technical Officer to provide the grants officer with information establishing whether or not the individual travel requests are consistent with the criteria stated in paragraph (c) of this section.

(3) The International Affairs Division is responsible for reviewing and concurring in travel to Communist areas. For foreign travel that involves any foreign area studies—political, programmatic, sociological or site surveys, geological studies, the collection of natural specimens, or similar activities—approval or concurrence of the foreign government involved must be obtained through the International Affairs Division.

(4) The Grants Officer is responsible for notifying the requestor, in writing, whether or not the travel request has been approved and, if it is approved, will request a brief technical trip report. A copy of the approved request and trip report will be provided to the International Affairs Division.

Subpart 6—Reports

§ 1260.600 General.

This subpart prescribes reports designed to provide records and statistics for management purposes and to comply with statutory requirements.

§ 1260.601 Individual procurement action report (NASA Form 507).

The Individual Procurement Action Report (NASA Form 507) is designed to provide essential procurement records and statistics through a single, uniform reporting program as a basis for required recurring and special reports to the President, the Congress, the Department of Labor, the Office of Emergency Preparedness, the General Accounting Office, the Small Business Administration, and other Federal agencies. The preparation and utilization of NASA Form 507 has been made an integral part of the agencywide system for the recording and reporting of financial and contractual status (FACS). Complete instructions covering the operation of this system are contained in the NASA Financial Management Manual and NFS, 48 CFR 1804.670.

§ 1260.602 Committee on Academic Science and Engineering (CASE) reports.

NASA Form 1356, "Committee on Academic Science and Engineering (C.A.S.E.) Report on College and University Projects" is either submitted with funded procurement requests or in the case of certain non-funded actions, initiated by the procuring office. All required NASA Forms 1356 will be completed, checked, and promptly forwarded to the Procurement Management Division, NASA Headquarters (Code HM), in accordance with the instructions on the form and NFS Subpart 18-4.676.

[52 FR 12379, Apr. 16, 1987]

§ 1260.603 Federal cash transactions report (SF 272).

Federal Cash Transactions Reports (SF 272) will be submitted within 15 working days following the end of each Federal Fiscal quarter as a condition of receiving advance payments, in accordance with instructions to be provided by the Financial Management Office of the installation which issued the grant. Any questions regarding payment should be directed to the Financial Management Officer of that installation.

[51 FR 2626, Jan. 17, 1986, as amended at 52 FR 12379, Apr. 16, 1987]

§ 1260.604 Annual inventory listing of government-owned property.

As provided in § 1260.408(f) of this part, an annual inventory listing of Government-owned property will be submitted by July 31 of each year, including the information specified in § 1260.509 and beginning and ending dollar value totals for the reporting period. In the final inventory, the Grantee shall account for any property acquired with Federal funds, or received from the Government, in accordance with the provisions of § 1260.408 of this part.

§ 1260.605 Status and final reports.

(a) Five copies of a brief, informal, Semiannual Status Report, including a concise statement of the research accomplished during the report period, shall be submitted. At the specific request of the Technical Officer, this requirement may be modified by use of the following special condition:

REPORTS SUBSTITUTION (JULY 1984)

Technical reports may be substituted for the required Semi-annual Status Reports. The title page of such reports shall clearly indicate that the substitution has been made, showing the period covered by the originally required status report.

(b) Upon completion of the research, the Grantee shall submit five copies of a final technical report which summarizes the results of the entire project. Citation of publications resulting from the research, or abstracts thereof, may serve as all or part of this final report. Research results not intended for publication in technical journals must be in the format prescribed for NASA Technical Notes. In addition, the Grantee will report to NASA whether or not any inventions required to be reported under the grant or cooperative agreement have been made in the performance of work thereunder.

(c) A properly certified final Federal Cash Transactions Report, SF 272, is required for each grant and cooperative agreement. Standard Forms 272 for regular quarterly reporting as provided in § 1260.603, and for a final report are forwarded to the business office of the grantee institution, together with the copy of the instrument; additional forms may be requested. Two copies of the final SF 272 should be forwarded to NASA within 90 calendar days after work under the grant or cooperative agreement has been completed.

APPENDIX TO PART 1260—LISTING OF EXHIBITS

Exhibit A—Delegation of Administration—Figure 1, Property Administration (NASA Form 1430A) and Figure 2, Closeout (NASA Form 1430A).

Exhibit B—Research Grant Award (NASA Form 1463).

Exhibit C—Cooperative Agreement (NASA Form 1562).

Exhibit D—NASA Provisions for Research Grants and Cooperative Agreements (NASA Form 1463A).

Exhibit E—Step Funding Illustration.

Exhibit F—Regulatory Bases.

The preceding list of exhibits are included in the NASA Grant and Cooperative Agreement Handbook which may be obtained by the Grantee as set forth in § 1260.309.

EXHIBIT G—PATENT RIGHTS—RETENTION BY THE GRANTEE (JUNE 1989)

(a) *Definitions*—(1) *Invention* means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).

(2) *Subject Invention* means any invention of the Grantee conceived or first actually reduced to practice in the performance of work under this grant, provided that in the case of a variety of plant, the date of determination (as defined in section 4(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d), must also occur during the period of the grant performance.

(3) *Practical Application* means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(4) *Made* when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) *Small Business Firm* means a domestic small business concern as defined at section 2 of Public Law 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this exhibit G, the size standards for small business concerns involved in Government procurement, and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

(6) *Nonprofit Organization* means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(b) *Allocation of principal rights.* The Grantee may retain the entire right, title, and interest throughout the world to each Subject Invention subject to the provisions of this exhibit G and 35 U.S.C. 203. With respect to any Subject Invention in which the Grantee retains title, the Federal Government shall have a non-exclusive, non-transferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the Subject Invention throughout the world.

(c) *Invention disclosure, election of title, and filing of patent applications by grantee.* (1) The Grantee will disclose each Subject Invention to NASA within 2 months after the inventor discloses it in writing to Grantee personnel responsible for patent matters. The disclosure to NASA shall be in the form of a written report and shall identify the grant under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to NASA, the Grantee will promptly notify NASA of the acceptance of any manuscript describing the invention for the publication or of any on sale or public use planned by the Grantee.

(2) The Grantee will elect in writing whether or not to retain title to any such invention by notifying NASA within 2 years of disclosure to NASA. However, in any case where publication, on sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by NASA to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Grantee will file its initial patent application on a Subject Invention to which it elects to retain title within 1 year after election of title or, if earlier, prior to the end of any statutory period wherein valid

patent protection can be obtained in the United States after publication, on sale, or public use. The Grantee will file patent applications in additional countries or international patent offices within either 10 months of the corresponding initial patent application or 6 months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure, election, and filing under paragraphs (c)(1), (c)(2), and (c)(3) of this exhibit G may, at the discretion of NASA, be granted.

(d) *Conditions when the government may obtain title.* The Grantee will convey to NASA, upon written request, title to any Subject Invention:

(1) If the Grantee fails to disclose or elect the Subject Invention within the times specified in paragraph (c) of this exhibit G, or elects not to retain title; provided, that NASA may only request title within 60 days after learning of the failure of the Grantee to disclose or elect within the specified times.

(2) In those countries in which the Grantee fails to file patent applications within the times specified in paragraph (c) of this exhibit G; provided, however, that if the Grantee has filed a patent application in a country after the times specified in paragraph (c) of this exhibit G, but prior to its receipt of the written request of NASA, the Grantee shall continue to retain title in that country.

(3) In any country in which the Grantee decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defined in reexamination or opposition proceeding on, a patent on a Subject Invention.

(e) *Minimum rights to grantee and protection of grantee right to file.* (1) The Grantee will retain a nonexclusive, royalty-free license throughout the world in each Subject Invention to which the Government obtains title, except if the Grantee fails to disclose the Subject Invention within the times specified in paragraph (c) of this exhibit G. The Grantee's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Grantee is a party and includes the right to grant sublicenses of the same scope to the extent the Grantee was legally obligated to do so at the time the grant was awarded. The license is transferable only with the approval of NASA, except when transferred to the successor of that part of the Grantee's business to which the invention pertains.

(2) The Grantee's domestic license may be revoked or modified by NASA to the extent necessary to achieve expeditious practical application of the Subject Invention pursuant to an application for an exclusive license submitted in accordance with 14 CFR 1245.210 of the NASA regulation, Licensing of NASA Inventions, 14 CFR 1245.2. This license will not be revoked in that field of use or the geographical areas in which the Grantee has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of NASA to the extent the Grantee, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, NASA will furnish the Grantee a written notice of its intention to revoke or modify the license, and the Grantee will be allowed 30 days (or such time as may be authorized by NASA for good cause shown by the Grantee) after the notice to show cause why the license should not be revoked or modified. The Grantee has the right to appeal, in accordance with 14 CFR 1245.210, any decision concerning the revocation or modification of the license.

(f) *Grantee action to protect the government's interest.* (1) The Grantee agrees to execute or to have executed and promptly deliver to NASA all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those Subject Inventions to which the Grantee elects to retain title, and (ii) convey title to NASA when requested under paragraph (d) of this exhibit G, and to enable the Government to obtain patent protection throughout the world in that Subject Invention.

(2) The Grantee agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Grantee each Subject Invention made under grant in order that the Grantee can comply with the disclosure provisions of paragraph (c) of this exhibit G, and to execute all papers necessary to file patent applications on Subject Inventions and to establish the Government's rights in the Subject Inventions. This disclosure format should require, as a minimum, the information required by paragraph (c)(1) of this exhibit G. The Grantee shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Grantee will notify NASA of any decision not to continue the prosecution of a patent application, pay maintenance fees,

or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The Grantee agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a Subject Invention, the following statement: "This invention was made with Government support under (identify the grant) awarded by NASA. The Government has certain rights in this invention."

(5) The Grantee shall include a list of all Subject Inventions required to be disclosed during the preceding year in the renewal proposal or annual status report, and a complete list (or a negative statement) for the entire award period shall be included in the final report.

(g) *Subcontracts.* (1) The Grantee will include this exhibit G, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or nonprofit organization. The subcontractor will retain all rights provided for the Grantee in this exhibit G, and the Grantee will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's Subject Inventions.

(2) The Grantee will include in all other subcontracts, regardless of tier, for experimental, developmental, research, design or engineering work the patent rights clause as required by NASA FAR Supplement, 48 CFR 1827.373(b).

(3) In the case of subcontracts, at any tier, when the prime award with NASA was a contract (but not a grant or cooperative agreement), NASA, subcontractor, and the contractor agree that the mutual obligations of the parties created by this exhibit G constitute a contract between the subcontractor and NASA with respect to those matters covered by this exhibit G; *Provided, however,* that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this exhibit G.

(h) *Reporting on utilization of subject inventions.* The Grantee agrees to submit, on request, periodic reports no more frequently than annually on the utilization of a Subject Invention or on efforts at obtaining such utilization that are being made by the Grantee or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Grantee, and such other data and information as NASA may reasonably specify. The Grantee also agrees to provide additional reports as may be requested by NASA in connection with any march-in proceeding undertaken by NASA in accordance with paragraph (j) of this exhibit G. As required by 35 U.S.C. 202(c)(5), NASA agrees it will not disclose such information to persons outside the Government without permission of the Grantee.

(i) *Preference for United States industry.* Notwithstanding any other provision of this exhibit G, the Grantee agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any Subject Invention in the United States unless such person agrees that any products embodying the Subject Invention or produced through the use of the Subject Invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by NASA upon a showing by the Grantee or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) *March-in rights.* The Grantee agrees that with respect to any Subject Invention in which it has acquired title, NASA has the right in accordance with the procedures established by NASA which are consistent with 37 CFR 401.6, Exercise of March-in Rights, to require the Grantee, an assignee, or exclusive licensee of a Subject Invention to grant a non-exclusive partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Grantee, assignee, or exclusive licensee refuses such a request NASA has the right to grant such a license itself if NASA determines that:

(1) Such action is necessary because the Grantee or assignee has not taken, or is not expected to take, within a reasonable time, effective steps to achieve practical application of the Subject Invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Grantee, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations, and such requirements are not reasonably satisfied by the Grantee, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this exhibit G has not been obtained or waived or because a licensee of the exclusive right to use or sell any Subject Invention in the United States is in breach of such agreement.

(k) *Special provisions for Grants with nonprofit organizations.* If the Grantee is a nonprofit organization, it agrees that:

(1) Rights to Subject Invention in the United States may not be assigned without the approval of NASA, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the Grantee;

(2) The Grantee will share royalties collected on a Subject Invention with the inventor including NASA co-inventors (when NASA deems it appropriate) when the Subject Invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the Grantee with respect to Subject Inventions, after payment of expenses (including payments to inventors) incidental to the administration of Subject Inventions, will be utilized for the support of scientific research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and that it will give a preference to a small business firm when licensing a subject invention if the Grantee determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the Grantee is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the dircretion of the Grantee. However, the Grantee agrees that the Secretary of Commerce may review the Grantee's licensing program and decisions regarding small business applicants, and the Grantee will negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when the Secretary's review discloses that the Grantee could take reasonable steps to more effectively implement the requirements of paragraph (k)(4) of this exhibit G.

(l) *Communications.* A copy of all submissions or requests required by this Exhibit G, plus a copy of any reports, manuscripts, publications or similar material bearing on patent matters, shall be sent to the installation Patent Counsel in addition to any other submission requirements in the Grant provisions. If any reports contain information describing a "Subject Invention" for which the Grantee has elected or may elect title, NASA will use reasonable efforts to delay public release by NASA or publication by NASA in a NASA technical series, for six months from the date of receipt, in order for a patent application to be filed, provided that the Grantee identify the information and the "Subject Invention" to which it relates at the time of submittal. If required by the grants officer, the Grantee shall provide the filing date, serial number and title, a copy of the patent application, and a patent number and issue date for any Subject Invention in any country in which the Grantee has applied for patents.

[54 FR 43052, Oct. 20, 1989]

PART 1261—PROCESSING OF MONETARY CLAIMS (GENERAL)

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AUTHORITY: Subparts 1261.4, 1261.5, and 1261.6 issued under 42 U.S.C. 2473(c); 31 U.S.C. 3711 *et seq.*; 5 U.S.C. 5514; 4 CFR Parts 101-105; 5 CFR Part 550 Subpart K, §§ 550.1101-550.1107.

SOURCE: 45 FR 48104, July 18, 1980, unless otherwise noted.

Subpart 1261.1—Employees' Personal Property Claims

AUTHORITY: 31 U.S.C. 2371, et seq.

§ 1261.100 Scope of subpart.

This subpart prescribes regulations governing the settlement of claims against the National Aeronautics and Space Administration (NASA) for damage to, or loss of, personal property incident to service with NASA.

§ 1261.101 Claimants.

(a) A claim for damage to, or loss of, personal property incident to service with NASA may be made only by:

(1) An officer or employee of the National Aeronautics and Space Administration;

(2) A member of the uniformed services (Army, Navy, Air Force, Marine Corps, Coast Guard, Coast and Geodetic Survey and Public Health Service) assigned to duty with or under the jurisdiction of NASA;

(3) The authorized agent or legal representative of a person named in paragraph (a) (1) or (2) of this section; or

(4) The survivors of a person named in paragraph (a) (1) or (2) of this section in the following order of precedence: Spouse; children, father or mother, or both; or brothers or sisters, or both. Claims by survivors may be allowed whether arising before, concurrently with, or after the decedent's death, if otherwise covered by this subpart.

(b) Employees of contractors with the United States and employees of nonappropriated fund activities are not included within the meaning of paragraph (a) (1) or (2) of this section.

(c) Claims may not be made by or for the benefit of a subrogee, assignee, conditional vendor, or other third party.

§ 1261.102 Maximum amount.

From October 1, 1982, to October 30, 1988, the maximum amount that may be paid under the Military Personnel and Civilian Employees' Claim Act of 1964, as amended (31 U.S.C. 3721) is $25,000, and on or after October 31, 1988, the maximum amount is $40,000 (Pub. L. 100-565, 102 Stat. 2833, October 31, 1988).

[54 FR 35456, Aug. 28, 1989]

§ 1261.103 Time limitations.

(a) A claim may be allowed only if the claim is presented in writing within 2 years after it accrues. For the purposes of this subpart, a claim accrues at the time of the accident or incident causing the loss or damage, or at such time as the loss or damage is or should have been discovered by the claimant through the exercise of due diligence.

(b) If a claim accrues in time of war or if an armed conflict intervenes within 2 years after it accrues, and if good cause is shown, the claim may be presented not later than 2 years after that cause ceases to exist, or 2 years after the war or armed conflict is terminated, whichever is earlier. The dates of beginning and ending of such an armed conflict are the dates established by concurrent resolution of the Congress or by a determination of the President.

§ 1261.104 Allowable claims.

(a) A claim may be allowed only if:

(1) The damage or loss was not caused wholly or partly by the negligent or wrongful act of the claimant, the claimant's agent, private employee, or family member (the standard to be applied is that of reasonable care under the circumstances);

(2) The possession of the property lost or damaged and the quantity is determined to have been reasonable, useful, or proper under the circumstances; and

(3) The claim is substantiated by proper and convincing evidence.

(b) Claims which are otherwise allowable under this subpart shall not be disallowed solely because the property was not in the possession of the claimant at the time of the damage or loss, or solely because the claimant was not the legal owner of the property for which the claim is made. For example, borrowed property may be the subject of a claim.

(c) Subject to the conditions in paragraph (a) of this section and the other provisions of this subpart, any claim for damage to, or loss of, personal property incident to service with NASA may be considered and allowed. The following are examples of the principal types of claims which may be allowed, but these examples are not exclusive and other types of claims may be allowed, unless excluded by § 1261.105.

(1) *Property loss or damage in quarters or other authorized places.* Claims may be allowed for damage to, or loss of, property arising from fire, flood, hurricane, other natural disaster, theft, or other unusual occurrence, while such property is located at:

(i) Quarters within the 50 States or the District of Columbia that were assigned to the claimant or provided by the United States;

(ii) Quarters outside the 50 States and the District of Columbia that were occupied by the claimant, whether or not they were assigned or provided by the United States, except when the claimant is a civilian employee who is a local inhabitant; or

(iii) Any warehouse, office working area, hospital, or other place authorized or apparently authorized for the reception or storage of property.

(2) *Transportation or travel losses.* Claims may be allowed for damage to, or loss of, property incident to transportation or storage pursuant to orders, or in connection with travel under orders, including property in the custody of a carrier, an agent or agency of the Government, or the claimant.

(3) *House trailers.* Claims may be allowed for damage to, or loss of, house trailers and their contents under the provisions of paragraph (c)(2) of this section.

(4) *Negligence of the Government.* Claims may be allowed for damage to, or loss of, property caused by the negligence or wrongful act or omission of any employee of the Government while acting within the scope of office or employment.

(5) *Enemy action or public service.* Claims may be allowed for damage to, or loss of, property as a direct consequence of:

(i) Enemy action or threat of action or combat, guerrilla, brigandage, or other belligerent activity, or unjust confiscation by a foreign power or its nationals;

(ii) Action by the claimant to quiet a civil disturbance or to alleviate a public disaster; or

(iii) Efforts by the claimant to save human life or Government property.

(6) *Property used for benefit of the Government.* Claims may be allowed for damage to, or loss of, property when used for the benefit of the Government at the request of, or with the knowledge and consent of, an authorized official.

(7) *Clothing and accessories.* Claims may be allowed for damage to, or loss of, clothing or accessories customarily worn on the person, such as eyeglasses, hearing aids or dentures.

§ 1261.105 Unallowable claims.

Claims are not allowable for the following:

(a) *Unassigned quarters in United States.* Claims may not be allowed for property loss or damage in quarters occupied by the claimant within the 50 States or the District of Columbia that were not assigned to claimant or provided in kind by the United States.

(b) *Money or currency.* Claims may not be allowed for loss of money or currency, except when lost incident to fire, flood, hurricane, other natural disaster, or by theft from quarters (as limited by paragraph (a)). Reimbursement for loss of money or currency is limited to an amount which is determined reasonable to have been in the claimant's possession at the time of the loss.

(c) *Government property.* Claims may not be allowed for property owned by the United States, except that for which the claimant is financially responsible to any agency of the Government other than NASA.

(d) *Business property.* Claims may not be allowed for property used in a private business enterprise.

(e) *Articles of extraordinary value.* Claims may not be allowed for valuable articles, such as cameras, watches, jewelry, furs; or other articles of extraordinary value, when shipped with household goods or as unaccompanied baggage (shipment includes storage). This prohibition does not apply to articles in the personal custody of the claimant or articles properly checked: *Provided,* That reasonable protection or security measures have been taken by claimant.

(f) *Unserviceable property.* Claims may not be allowed for worn-out unserviceable property.

(g) *Illegal possession.* Claims may not be allowed for property acquired, possessed, or transported in violation of law or in violation of applicable regulations or directives.

(h) *Estimate fees.* Claims may not include fees paid to obtain estimates or repair, except when it is clear that an estimate could not have been obtained without paying a fee.

(i) *Automobiles and other vehicles.* Claims may not be allowed for damage to, or loss of, automobiles and other vehicles unless:

(1) The vehicles were required to be used for official Government business (official Government business, as used here, does not include travel between quarters and place of duty, parking of vehicles incident to such travel, or use of vehicles for the convenience of the owner); or

(2) Shipment of motor vehicles to, from, or between overseas areas was being furnished or provided by the Government; or

(3) The damage or loss was caused by the negligent or wrongful act or omission of any employee of the Government acting within the scope of office or employment.

§ 1261.106 Submission of claims.

All claims shall be submitted in duplicate to the Administrator or designee on NASA Form 1204, "Employee's

Claim for Damage to, or Loss of, Personal Property Incident to Service."

§ 1261.107 Evidence in support of claim.

(a) *General.* In addition to the information required on NASA Form 1204, and any other evidence required by the Administrator or designee, the claimant will furnish the following evidence when relevant:

(1) A corroborating statement from the claimant's supervisor or other person or persons having personal knowledge of the facts concerning the claim.

(2) A statement of any property recovered or replaced in kind.

(3) An itemized bill of repair for property which has been repaired, or one or more written estimates of the cost of repairs from competent persons if the property is repairable but has not been repaired.

(b) *Specific classes of claims.* Claims of the following types shall also be accompanied with specific and detailed evidence as indicated:

(1) *Theft, burglary, etc.* A statement describing in detail the location where the loss occurred and the facts and circumstances surrounding the loss, including supporting documentation, e.g., a police report.

(2) *Transportation losses.* A copy of orders authorizing the travel, transportation or shipment, or a certificate explaining the absence of such orders and stating their substance; all bills of lading and inventories of property shipped; and a statement indicating the condition of the property when turned over to the carrier and when received from the carrier.

§ 1261.108 Recovery from carriers, insurers, and other third parties.

(a) *General.* NASA is not an insurer and does not underwrite all personal property losses that an employee may sustain. Employees are encouraged to carry private insurance to the maximum extent practicable to avoid large losses or losses which may not be recoverable from NASA. The procedures set forth in this section are designed to enable the claimant to obtain the maximum amount of compensation for personal property loss or damage. Failure of the claimant to comply with these procedures may reduce or preclude payment of the claim.

(b) *Demand on carrier, contractor, warehouse owner/operator, or insurer.* When it appears that property has been damaged or lost under circumstances in which a carrier, warehouse owner/operator, contractor or insurer may be responsible, the claimant shall make a written demand on such party, either before or after submitting a claim against NASA. The Administrator or designee, if requested, will assist in making demand on the third party. No such demand need be made if, in the opinion of the Administrator or designee, it would be impracticable or any recovery would be insignificant, or if circumstances preclude the claimant from making timely demand.

(c) *Action subsequent to demand.* A copy of the demand and of any related correspondence shall be submitted to the Administrator or designee. If the carrier, insurer, or other third party offers a settlement which is less than the amount of the demand, the claimant shall consult with the Administrator or designee before accepting the amount offered. The claimant shall also notify the Administrator or designee promptly of any other action by a third party, including settlement, partial settlement, or denial of liability.

(d) *Application of recovery.* When the amount recovered from a carrier, insurer, or other third party is greater than or equal to the claimant's total loss as determined under this subpart, no compensation is allowable under this subpart. When the amount recovered is less than such total loss, the allowable amount is determined by deducting the recovery from the amount of total loss subject to the maximum set forth in § 1261.102.

(e) *Transfer of rights.* The claimant shall assign to the United States, to the extent of any payment accepted on a claim, all rights, title, and interest in any claim he/she may have against any carrier, insurer, or other party arising out of the accident or incident on which the claim against the United States is based. The claimant shall also, upon request, furnish such evidence and other cooperation as may be required to enable the United States to enforce the claim. After payment on the claim by the United States, the claimant shall, upon receipt of any payment from a carrier, insurer, or other party, notify the Admininstrator or designee and pay the proceeds to the United States to the extent required under the provisions of paragraph (d).

§ 1261.109 Computation of allowance.

(a) The amount allowed for damage to or loss of any item of property may not exceed the cost of the item (either the price paid in cash or property, or the value at the time of acquisition if not acquired by purchase or exchange). There will be no allowance for replacement cost or for appreciation in the value of the property. Subject to these limitations, the amount allowable is either:

(1) The depreciated value, immediately prior to the loss or damage of property lost or damaged beyond economical repair, less any salvage value; or

(2) The reasonable cost of repairs, when property is economically repairable: Provided, That the cost of repairs does not exceed the amount allowable under paragraph (a)(1) of this section.

(b) Depreciation in value is determined by considering the type of article involved, its cost, its condition when damaged or lost, and the time elapsed between the date of acquisition and the date of damage or loss, with appropriate recognition of current replacement value.

(c) *Limitation on agent or attorney fees.* No more than 10 per centum of the amount paid in settlement of each individual claim submitted and settled shall be paid or delivered to or received by an agent or attorney on account of services rendered in connection with that claim, any contract to the contrary notwithstanding (31 U.S.C. 243).

§ 1261.110 Settlement of claims.

(a) *Settlement officials.* (1) Claims in the amount of $5,000 or more will be acted upon by the General Counsel. Claims less than $5,000 will be acted upon by the Chief Counsel of the NASA Field Installation where the employee was assigned at the time of the loss or damage or the Assistant General Counsel for Litigation for NASA Headquarters claims.

(2) Claims arising for $5,000 or more shall be investigated by the Chief Counsel or Assistant General Counsel for Litigation, as appropriate, and a report and recommendation thereon shall be forwarded to the General Counsel.

(b) *Action by settlement official.* (1) For each claim, the settlement official shall complete a report in duplicate on NASA Form 1204 and retain a claim file consisting of the original claim, the report, and any other relevant evidence or documents.

(2) When a claim is allowed in an amount acceptable to the claimant, the settlement official shall prepare a "Voucher for Payment of Employees' Personal Property Claims" (NASA Form 1220), have it properly executed by the claimant, and forward it with a copy of the approved claim (NASA Form 1204) to the appropriate NASA fiscal or financial management office for payment.

(3) When a claim is disallowed or is partially allowed in an amount unacceptable to the claimant, the settlement official shall notify the claimant in writing of the action taken and the reasons therefor. If not satisfied with the action taken, the claimant may, within 60 days after receipt of such notice, request reconsideration of the claim and may submit any new evidence that he/she feels to be pertinent to the claim. If such a claim has been disallowed at the field installation level, the claimant may request reconsideration by the field installation, or by the General Counsel, or both.

(c) *Final and conclusive.* The settlement of a claim under this subpart, whether by full or partial allowance or disallowance, is final and conclusive.

Subpart 1261.2—[Reserved]

Subpart 1261.3—Claims Against NASA or Its Employees for Damage to or Loss of Property or Personal Injury or Death—Accruing On or After January 18, 1967

AUTHORITY: 28 U.S.C. 2671-2680, 42 U.S.C. 2473(c)(13), and 28 CFR Part 14.

§ 1261.300 Scope of subpart.

This subpart sets forth the procedures for:

(a) The submission of, and action by NASA upon, claims against the United States arising out of the activities of NASA for damage to or loss of property or personal injury or death, and designates the NASA officials authorized to act upon such claims.

(b) The handling of lawsuits against NASA employee(s) for damage to or loss of property or personal injury or death resulting from a NASA employee's activities within the scope of his/her office or employment.

§ 1261.301 Authority.

(a) Under the provisions of the Federal Tort Claims Act, as amended (see 28 U.S.C. 2671-2680), and subject to its limitations, the Administrator or designee is authorized to consider, ascertain, adjust, determine, compromise, and settle any claim for money damages against the United States for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any NASA employee while acting within the scope of his/her office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. In exercising such authority, the Administrator or designee is required to act in accordance with regulations prescribed by the Attorney General (28 CFR Part 14). An award, compromise, or settlement in excess of $25,000 may be effected only with the prior written approval of the Attorney General or designee.

(b) Under sec. 203(c)(13)(A) of the National Aeronautics and Space Act of 1958, as amended, 42 U.S.C. 2473(c)(13)(A), NASA is authorized to consider, ascertain, adjust, determine, settle, and pay, on behalf of the United States, in full satisfaction thereof, any claim for $25,000 or less against the United States for bodily injury, death or damage to or loss of real or personal property resulting from the conduct of NASA's functions as specified in 42 U.S.C. 2473(a). At the discretion of NASA, a claim may be settled and paid under this authority even though the United States could not be held legally liable to the claimant.

(c) Under 42 U.S.C. 2473(c)(13)(B), if NASA considers that a claim in excess of $25,000 is meritorious and would otherwise be covered by 42 U.S.C. 2473(c)(13)(A), NASA may report the facts and circumstances of the claim to the Congress for its consideration or to the Comptroller General as provided in the "Supplemental Appropriations Act, 1978," Pub. L. 95-240 (92 Stat. 107), 31 U.S.C. 724a.

(d) Under 28 U.S.C. 2679, the Attorney General of the United States shall defend any civil action or proceeding brought in any court against a Government employee for injury or loss of property or personal injury or death, resulting from the operation of a motor vehicle by the Government employee while acting within the scope of office or employment. In effect, this legislation is designed to protect an employee driving a motor vehicle on Government business by converting such a civil court action or proceeding against the employee into a claim against the United States: Provided, That the employee was acting within the scope of employment at the time of the accident. The remedy against the United States provided by 28 U.S.C. 2672 (administrative adjustment of claims) and 28 U.S.C. 1346(b) (civil action against the United States) then becomes the plaintiff's exclusive remedy.

§ 1261.302 Claim.

Unless the context otherwise requires, "claim" means a claim for money damages against the United States arising out of the activities of NASA, for injury or loss of property, or personal injury or death. A claim "arises" at the place where the injury, loss, or death occurs.

§ 1261.303 Claimant.

(a) A claim for damage to or loss of property may be presented by the owner of the property, duly authorized agent or legal representative.

(b) A claim for personal injury may be presented by the injured person, duly authorized agent, or legal representative.

(c) A claim based on death may be presented by the executor(rix) or administrator(rix) of the decedent's estate, or by any other person legally entitled to assert such a claim in accordance with applicable State law.

(d) A claim for loss wholly compensated by an insurer with the rights of a subrogee may be presented by the insurer. A claim for loss partially compensated by an insurer with the rights of a subrogee may be presented by the parties individually as their respective interests appear, or jointly.

(e) A claim presented by an agent or legal representative shall be presented in the name of the claimant, be signed by the agent or legal representative, show the title or legal capacity of the person signing and be accompanied by evidence of the agent's or legal representative's authority to present a claim on behalf of the claimant as agent, executor(rix), administrator (rix), parent, guardian, or other representative.

§ 1261.304 Place of filing claim.

A claim arising in the United States should be submitted to the Chief Counsel of the NASA Installation whose activities are believed to have given rise to the claimed injury, loss, or death. If the identity of such installation is not known, or if the claim arose in a foreign country, the claim should be submitted to the General Counsel, National Aeronautics and Space Administration, Washington, DC 20546.

§ 1261.305 Form of claim.

(a) The official designated in § 1261.308 shall, prior to acting on a claim, require the claimant to submit a completed Standard Form 95—"Claim for Damage, Injury or Death."

(b) NASA installations will furnish copies of Standard Form 95 upon request.

§ 1261.306 Evidence and information required.

(a) The circumstances alleged to have given rise to the claim, and the amount claimed, should, so far as possible, be substantiated by competent evidence. Supporting statements, estimates, and the like should, if possible, be obtained from disinterested parties. For specific guidance as to Federal Tort Claims Act claims, see Department of Justice regulations on "Administrative Claims under Federal Tort Claims Act" at 28 CFR Part 14.

(b) In addition to the evidence and information required under paragraph (a), any claimant shall be required to submit information as to the amount of money or other property received as damages or compensation, or which the claimant may be entitled to receive, by reason of the claimed injury, loss, or death from persons other than NASA or NASA employees. (Such persons include, but are not limited to, insurers, employers, and persons whose conduct was a cause of the accident or incident.)

(c) Any document in other than the English language should be accompanied by an English translation.

§ 1261.307 Time limitations.

(a) A claim may not be acted upon pursuant to the Federal Tort Claims Act unless it is presented to NASA within 2 years after it accrued.

(b) A claim may not be acted upon pursuant to 42 U.S.C. 2473(c)(13) (A) or (B) unless it is presented to NASA within 2 years after the occurrence of the accident or incident out of which the claim arose.

(c) A claim shall be deemed to have been presented to NASA when NASA receives from a claimant or duly authorized agent or legal representative an executed Standard Form 95 or other written notification of an incident or accident, accompanied by a claim in a sum certain.

§ 1261.308 NASA officials authorized to act upon claims.

(a) Claims in the amount of $10,000 or more will be acted upon as directed by the General Counsel;

(b) Claims less than $10,000 will be acted upon by the Chief Counsel of the NASA Field Installation where the employee was assigned at the time of the loss or damage or the Assistant General Counsel for Litigation for NASA Headquarters claims.

(c) Claims of $10,000 or more, pursuant either to the Federal Tort Claims Act, or 42 U.S.C. 2473(c)(13), shall be acted upon only with the prior approval of the General Counsel. Such claims shall be forwarded to the General Counsel for approval, if the Chief Counsel or the Assistant General Counsel for Litigation is of the opinion that the claim may be meritorious and otherwise suitable for settlement under any authority. A claim so forwarded should be accompanied by a report of the facts of the claim, based upon such investigation as may be appropriate, and a recommendation as to the action to be taken.

(d) Claims acted upon by NASA officials pursuant to this section shall be acted upon pursuant to the Federal Tort Claims Act, or 42 U.S.C. 2473(c)(13) (A) or (B), as the NASA official deems appropriate.

§ 1261.309 Action under the Federal Tort Claims Act.

Where a claim is to be acted upon pursuant to the Federal Tort Claims Act, action shall be taken in accordance with 28 U.S.C. 2672, other provisions of the Federal Tort Claims Act as may be applicable (e.g., 28 U.S.C. 2680), and regulations prescribed by the Attorney General which appear at 28 CFR Part 14.

§ 1261.310 Investigation of claims.

The officials designated in § 1261.308 shall conduct such investigation of a claim as deemed appropriate. The officials may request any NASA office or other Federal agency to assist in the investigation.

§ 1261.311 Claims requiring Department of Justice approval or consultation.

(a) When in the opinion of the NASA official designated in § 1261.308, Department of Justice approval or consultation may be required, pursuant to 28 CFR Part 14, in connection with a claim being acted upon under the Federal Tort Claims Act, the following papers shall be forwarded to the General Counsel:

(1) A short and concise statement of the facts of the claim.

(2) Copies of all relevant portions of the claim file.

(3) A statement of the recommendations or views of the forwarding official.

(b) A claim forwarded to the General Counsel in accordance with paragraph (a) of this section, or upon which the General Counsel is acting pursuant to § 1261.308(c), shall be referred to the Department of Justice when, in the opinion of the General Counsel, Department of Justice approval or consultation is required or may be appropriate.

§ 1261.312 Action on approved claims.

(a) Upon settlement of a claim, the official designated in § 1261.308 will prepare and have executed by the claimant a Voucher for Payment of Tort Claims (NASA Form 616) if the claim has been acted upon pursuant to 42 U.S.C. 2473(c)(13), or a Voucher for Payment under Federal Tort Claims Act (Standard Form 1145) if the claim has been acted upon pursuant to the Federal Tort Claims Act. The form will then be referred to the cognizant NASA installation fiscal or financial management office for appropriate action.

(b) When a claimant is represented by an attorney, both the claimant and attorney will be designated as "payees" on the voucher, and the check will be delivered to the attorney whose address shall appear on the voucher.

(c) Acceptance by the claimant, agent, or legal representative, of any award, compromise, or settlement made pursuant to this subpart shall be final and conclusive on the claimant, agent or legal representative and any other person on whose behalf or for whose benefit the claim has been presented, and shall constitute a complete release of any claim against the United States and against any employee of the Government whose act or omission gave rise to the claim, by reason of the same subject matter.

§ 1261.313 Required notification in the event of denial.

Final denial of a claim shall be in writing and shall be sent to the claimant, the attorney, or legal representative by certified or registered mail. The notification of final denial may include a statement of the reasons for the denial and shall include a statement that if the claimant is dissatisfied with NASA's action, the claimant may file suit in an appropriate U.S. District Court not later than 6 months after the date of mailing the notification.

§ 1261.314 [Reserved]

§ 1261.315 Procedures for the handling of lawsuits against NASA employees arising within the scope of their office or employment.

The following procedures shall be followed in the event that a civil action or proceeding is brought, in any court, against any employee of NASA (or against the estate) for injury or loss of property or personal injury or death, resulting from the NASA employee's activities while acting within the scope of office or employment:

(a) After being served with process or pleadings in such an action or proceeding, the employee (or the executor(rix) or administrator(rix) of the estate) shall immediately deliver all such process and pleadings or an attested true copy thereof, together with a fully detailed report of the circumstances of the accident giving rise to the court action or proceeding, to the following officials:

(1) The Assistant General Counsel for Litigation insofar as actions or proceedings against employees of NASA Headquarters are concerned; or

(2) The Chief Counsel of the NASA Installation at which the employee is employed, insofar as actions against other than NASA Headquarters employees are concerned.

(b) Upon receipt of such process and pleadings, the Assistant General Counsel for Litigation or the Chief Counsel of the NASA Installation receiving the same shall furnish to the U.S. Attorney for the district embracing the place where the action or proceeding is brought and, if appropriate, the Director, Torts Branch, Civil Division, Department of Justice, the following:

(1) Copies of all such process and pleadings in the action or proceeding promptly upon receipt thereof; and

(2) A report containing a statement of the circumstances of the incident giving rise to the action or proceeding, and all data bearing upon the question of whether the employee was acting within the scope of office or employment with NASA at the time of the incident, at the earliest possible date, or within such time as shall be fixed by the U.S. Attorney upon request.

(c) The Assistant General Counsel for Litigation or a Chief Counsel acting pursuant to paragraph (b) of this section shall submit the following documents to the General Counsel, who is hereby designated to receive such documents on behalf of the Administrator:

(1) Copies of all process and pleadings submitted to a U.S. Attorney in accordance with paragraph (b).

(2) In addition, where the action or proceeding is for damages in excess of $25,000, or where (in the opinion of the Chief Counsel) such action or proceeding involves a new precedent, a new point of law, or a question of policy, copies of reports and all other papers submitted to the U.S. Attorney.

§ 1261.316 Policy.

(a) The National Aeronautics and Space Administration may indemnify a present or former NASA employee, who is personally named as a defendant in any civil suit in state or Federal court, or in an arbitration proceeding or other proceeding seeking damages against that employee personally, for any verdict, judgment, appeal bond, or other monetary award which is rendered against such employee, provided that the conduct giving rise to the verdict, judgment, appeal bond, or award was taken within the scope of his or her employment and that such indemnification is in the interest of the National Aeronautics and Space Administration, as determined by the Administration or designee.

(b) The National Aeronautics and Space Administration may settle or compromise a personal damage claim against a present or former NASA employee by the payment of available funds, at any time, provided the alleged conduct giving rise to the personal damage claim was taken within the employee's scope of employment and that such settlement or compromise is in the interest of the National Aeronautics and Space Administration, as determined by the Administrator or designee.

(c) Absent exceptional circumstances as determined by the Administrator or designee, the agency will not entertain a request either to agree to indemnify or to settle a personal damage claim before entry of an adverse verdict, judgment, or award.

(d) A present or past NASA employee may request indemnification to satisfy a verdict, judgment, or award entered against that employee. The employee shall submit a written request, with appropriate documentation including copies of the verdict, judgment, appeal bond, award, or settlement proposal to the General Counsel, who shall make a recommended disposition of the request. Where appropriate, the agency shall seek the views of the Department of Justice. The General Counsel shall forward the request, the accompanying documentation, and the General Counsel's recommendation to the Administrator for decision.

(e) Any payment under this section either to indemnify a National Aeronautics and Space Administration employee or to settle a personal damage claim shall be contingent upon the availability of appropriated funds of the National Aeronautics and Space Administration.

[53 FR 27482, July 21, 1988]

§ 1261.317 Attorney-client privilege.

(a) Attorneys employed by the National Aeronautics and Space Administration participate in the process utilized for the purpose of determining whether the agency should request the Department of Justice to provide representation to a present or former agency employee sued, subpoenaed, or charged in his/her individual capacity, and attorneys employed by the National Aeronautics and Space Administration provide assistance in obtaining representation of such an agency employee. In these roles, agency attorneys undertake a full and traditional attorney-client relationship with the employee with respect to application of the attorney-client privilege. If representation is authorized, National Aeronautics and Space Administration attorneys who assist in the representation of a present or former employee also undertake a full and traditional attorney-client relationship with that employee with respect to the attorney-client privilege.

(b) Any adverse information communicated by the client-employee to an agency attorney during the course of such attorney-client relationship shall not be disclosed to anyone, either inside or outside the National Aeronautics and Space Administration, other than attorneys resonsible for representation of the employee, unless such disclosure is authorized by the employee. Such adverse information shall continue to be fully protected whether or not representation is provided and even though representation may be denied or discontinued.

[53 FR 27483, July 21, 1988]

Subpart 1261.4—Collection of Civil Claims of the United States Arising Out of the Activities of the National Aeronautics and Space Administration (NASA)

SOURCE: 52 FR 19487, May 26, 1987, unless otherwise noted.

§ 1261.400 Scope of subpart.

(a) These regulations do the following:

(1) Prescribe standards for the administrative collection, compromise, suspension or termination of collection, and referral to the General Ac-

counting Office (GAO), and/or to the Department of Justice (DJ) for litigation, of civil claims as defined by 31 U.S.C. 3701(b), arising out of the activities of NASA;

(2) Designate the responsible NASA officials authorized to effect actions hereunder; and

(3) Require compliance with the GAO/DJ joint regulations at 4 CFR Parts 101 through 105 and the Office of Personnel Management (OPM) regulations at 5 CFR Part 550, Subpart K.

(b) Failure to comply with any provision of the GAO/DJ or OPM regulations shall not be available as a defense to any debtor (4 CFR 101.8).

(c) These regulations do not include any claim based in whole or in part on violation of the anti-trust laws; any claim as to which there is an indication of fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim; tax claims; or Federal interagency claims (4 CFR 101.3).

§ 1261.401 Definitions.

(a) *Claim and debt.* The terms denote a civil claim arising from the activities of NASA for an amount of money, or return or value of property (see 4 CFR 101.5), owing to the United States from any person, organization, or entity, except another Federal agency. The words *claim* and *debt* have been used interchangeably and are considered synonymous.

(b) *Delinquent debt.* The debt is *delinquent* if it has not been paid by the date specified in the initial written notification (e.g., § 1261.407) or applicable contractual agreement, unless other acceptable (to NASA) payment arrangements have been made by that date, or if, at any time thereafter, the debtor fails to satisfy an obligation under the payment agreement.

(c) *Referral for litigation.* Referral through the NASA installation's legal counsel to the Department of Justice (Main Justice or the United States Attorney, as appropriate) for legal proceedings.

§ 1261.402 Delegation of authority.

The following NASA officials are delegated authority, as qualified by § 1261.403, to take such action as is authorized by these regulations to collect, compromise, suspend/terminate collection, and upon consultation with and through legal counsel, to refer the claim (as applicable) to the GAO or Department of Justice:

(a) For field installations, with regard to Subpart 1261.4 and Subpart 1261.5: The Director of the Installation or a designee who reports directly to the Installation Director. A copy of such designation, if any, shall be sent to the Director, Financial Management Division, NASA Headquarters.

(b) For Headquarters, with regard to Subpart 1261.4 and Subpart 1261.5: The Associate Administrator for Management or a designee who reports directly to the Associate Administrator for Management. A copy of such designation, if any, shall be sent to the Director, Financial Management Division, NASA Headquarters.

(c) With respect to the analysis required by § 1261.413: The NASA Comptroller or designee.

(d) NASA wide, with regard to Subpart 1261.6: The NASA Comptroller or designee.

(e) NASA wide, for complying with pertinent provisions under these regulations for agency hearing or review (see § 1261.408(b), § 1261.503, and § 1261.603(c)): The NASA General Counsel or designee.

§ 1261.403 Consultation with appropriate officials; negotiation.

(a) The authority pursuant to § 1261.402 to determine to forego collection of interest, to accept payment of a claim in installments, or, as to claims which do not exceed $20,000, exclusive of interest and related charges, to compromise a claim or to refrain from doing so, or to refrain from, suspend or terminate collection action, shall be exercised only after consultation with legal counsel for the particular installation and the following NASA officials or designees, who may also be requested to negotiate the appropriate agreements or arrangements with the debtor:

(1) With respect to claims against contractors or grantees arising in connection with contracts or grants—the contracting officer and the financial management officer of the installation concerned.

(2) With respect to claims against commercial carriers for loss of or damage to NASA freight shipment—the cognizant transportation officers or the official who determined the amount of the claim, as appropriate, and the financial management officers of the installation concerned.

(3) With respect to claims against employees of NASA incident to their employment—the personnel officer and the financial management officer of the installation concerned.

(b) The appropriate counsel's office shall review and concur in the following:

(1) All communications to and agreements with debtors relating to claims collection.

(2) All determinations to compromise a claim, or to suspend or terminate collection action.

(3) All referrals of claims, other than referrals to the Department of Justice pursuant to § 1261.404(b)(1).

(4) All documents releasing debtors from liability to the United States.

(5) All other actions relating to the collection of a claim which in the opinion of the official designated in or pursuant to § 1261.402 may affect the rights of the United States.

§ 1261.404 Services of the Inspector General.

(a) At the request of an official designated in or pursuant to § 1261.402, the Office of the Inspector General will, where practicable, conduct such investigations as may assist in the collection, compromise, or referral of claims of the United States, including investigations to determine the location and financial resources of the debtors.

(b) Any claim which, in the opinion of an official designated in or pursuant to § 1261.402 or § 1261.403, may indicate fraud, presentation of a false claim, or misrepresentation, on the part of the debtor or any other party having an interest in the claim, shall be referred by the designated official to the Inspector General (IG), NASA Headquarters, or to the nearest office of the NASA IG. After an investigation as may be appropriate, the IG shall:

(1) Notice the official, from whom the claim was received, of the findings and refer the claim to the Department of Justice in accordance with the provisions of 4 CFR 101.3; or

(2) If it were found that there is no such indication of fraud, the presentation of a false claim, or misrepresentation, return the claim to the official from whom it was received.

§ 1261.405 Subdivision of claims not authorized; other administrative proceedings.

(a) *Subdivision of claims.* Claims may not be subdivided to avoid the $20,000 ceiling, exclusive of interest, penalties, and administrative costs, for purposes of compromise (§ 1261.414) or suspension or termination of collection (§ 1261.416). The debtor's liability arising from a particular transaction or contract shall be considered a single claim (4 CFR 101.6).

(b) Required administrative proceedings. Nothing contained in these regulations is intended to require NASA to omit, foreclose, or duplicate administrative proceedings required by contract or other applicable laws and implementing regulations (4 CFR 101.7).

§ 1261.406 Aggressive collection action; documentation.

(a) NASA shall take aggressive action, on a timely basis with effective followup, to collect all claims of the United States for money or property arising out of NASA activities, and to cooperate with the other Federal agencies in debt collection activities.

(b) All administrative collection action shall be documented and the bases for compromise, or for termination or suspension of collection action, should be set out in detail. Such documentation, including the Claims Collection Litigation Report under § 1261.417(e), should be retained in the appropriate claims file.

§ 1261.407 Demand for payment; limitation periods.

(a) Appropriate written demands shall be made promptly upon a debtor of the United States in terms which inform the debtor of the consequences of failure to cooperate. A total of three progressively stronger written demands at not more than 30-day intervals will normally be made unless a response to the first or second demand indicates that a further demand would be futile and the debtor's response does not require rebuttal. In determining the timing of demand letters, NASA will give due regard to the need to act promptly so that, as a general rule, if necessary to refer the debt to the Department of Justice for litigation, such referral can be made within one year of the agency's final determination of the fact and the amount of the debt. When necessary to protect the Government's interests (for example, to prevent the statute of limitations, 28 U.S.C. 2415, from expiring), written demand may be preceded by other appropriate actions, including immediate referral for litigation.

(b) The initial demand letter should inform the debtor of:

(1) The basis for the indebtedness and whatever rights the debtor may have to seek review within the agency;

(2) The applicable standards for assessing interest, penalties, and administrative costs (§ 1261.412); and

(3) The date by which payment is to be made, which normally should be not more than 30 days from the date that the initial demand letter was mailed or hand delivered. The responsible official should exercise care to ensure that demand letters are mailed or hand delivered on the same day that they are actually dated. Apart from these requirements, there is no prescribed format for demand letters. However, as appropriate to the circumstances, the responsible official may consider including, either in the initial demand letter or in subsequent letters, such items the NASA's willingness to discuss alternative methods of payment, or intentions with respect to referral of the debt to the Department of Justice for litigation.

(c) NASA should respond promptly to communications from the debtor, within 30 days whenever feasible, and should advise debtors who dispute the debt to furnish available evidence to support their contentions.

(d) If either prior to the initiation of, any time during, or after completion of the demand cycle, a determination to pursue offset is made, then the procedures specified in Subparts 1261.5 and 1261.6, as applicable, should be followed. The availability of funds for offset and NASA's determination to pursue it release the agency from the necessity of further compliance with paragraphs (a), (b), and (c) of this section. If the agency has not already sent the first demand letter, the agency's written notification of its intent to offset must give the debtor the opportunity to make voluntary payment, a requirement which will be satisfied by compliance with the notice requirements of § 1261.502 or § 1261.603(a), as applicable.

(e) NASA should undertake personal interviews with its debtors whenever this is feasible, having regard for the amounts involved and the proximity of agency representatives to such debtors; and may attempt to effect compromise of the claim in accordance with § 1261.414.

(f) When a debtor is employed by the Federal government or is a member of the military establishment or the Coast Guard, and collection by offset cannot be accomplished in accordance with Subpart 1261.6, the employing agency will be contacted for the purpose of arranging with the debtor for payment of the indebtedness by allotment or otherwise in accordance with section 206 of Executive Order 11222, May 8, 1965, 30 FR 6469, which provides that: "An employee is expected to meet all just financial obligations, especially those—such as Federal, State, or local taxes—which are imposed by law" (4 CFR 102.81).

§ 1261.408 Use of consumer reporting agency.

(a) The term *consumer reporting agency* has the meaning provided in the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701(a)(3)):

(1) A consumer reporting agency as that term is defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f); or

(2) A person that, for money or on a cooperative basis, regularly—

(i) Gets information on consumers to give the information to a consumer reporting agency; or

(ii) Serves as a marketing agent under an arrangement allowing a third party to get the information from a consumer reporting agency.

(b) NASA Headquarters Financial Management Division, shall be the focal contact between NASA and consumer reporting agencies. The following procedures shall apply when such agencies are employed by NASA:

(1) After the appropriate notice pursuant to 5 U.S.C. 552a(e)(4) has been published, NASA may disclose, in accordance with 5 U.S.C. 552a(b)(12), information about a debtor to a consumer reporting agency. Such information may include:

(i) That a claim has been determined to be valid and is overdue (including violation by debtor of a repayment plan or other claim settlement agreement);

(ii) The name, address, taxpayer identification number, and any other information necessary to establish the identity of the individual responsible for the claim;

(iii) Amount, status, and history of the claim;

(iv) Program or pertinent activity under which the claim arose.

(2) Before disclosing the information specified in paragraph (b)(1) of this section, NASA shall comply with 31 U.S.C. 3711(f) by:

(i) Taking reasonable action to locate the individual if a current address is not available;

(ii) If a current address is available, noticing the individual by certified mail, return receipt requested, that: The designated NASA official has reviewed the claim and determined that it is valid and overdue; within not less than 60 days after sending this notice, NASA intends to disclose to a consumer reporting agency the specific information to be disclosed under paragraph (b)(1) of this section; the individual may request a complete explanation of the claim, dispute the information in the records of NASA about the claim, and file for an administrative review or repeal of the claim or for reconsideration of the initial decision on the claim.

(3) If an administrative review or reconsideration is requested, the responsible official or designee shall refer the request to the appropriate NASA legal counsel for an impartial review and determination by counsel or designee based on the entire written record. If the reviewer cannot resolve the question of indebtedness based upon the available documentary evidence, verified written statements by the debtor or the responsible official may be requested on any pertinent matter not addressed by the available record.

(c) If the information is to be submitted to a consumer reporting agency, the responsible official shall obtain a verified statement from such agency which gives satisfactory assurances that the particular agency is complying with all laws of the United States related to providing consumer credit information; and thereafter ensure that the consumer reporting agency is promptly informed of any substantial change in the condition or amount of the claim, or, on request of such agency, promptly verify or correct information about the claim.

§ 1261.409 Contracting for collection services.

(a) When NASA determines that there is a need to contract for collection services, the following conditions must attach:

(1) The authority to resolve disputes, compromise claims, suspend or terminate collection action, and refer the matter for litigation must be retained by NASA.

(2) The contractor shall be subject to the Privacy Act of 1974, as amended, to the extent specified in 5 U.S.C. 552a(m), and to applicable Federal and State laws and regulations pertaining to debt collection practices—for example, the Fair Debt Collection Practices Act (15 U.S.C. 1692), and 26 U.S.C. 6103(p)(4) and applicable regulations of the Internal Revenue Service;

(3) The contractor must be required to account strictly for all amounts collected; and

(4) The contractor must agree to provide any data contained in its files relating to collection actions and related reports, current address of debtor, and reasonably current credit information upon returning an account to NASA for subsequent referral to the Department of Justice for litigation.

(b) Funding of collection service contracts:

(1) NASA may fund a collection service contract on a fixed-fee basis—that is, payment of a fixed fee determined without regard to the amount actually collected under the contract. However, such contract may be entered into only if and to the extent provided in the appropriation act or other legislation, except that this requirement does not apply to the use of a revolving fund authorized by statute. Accordingly, payment of the fixed-fee must be charged to available agency appropriations. See 4 CFR 102.6(b) (1) and (3).

(2) NASA may also fund a collection service contract on a contingent-fee basis—that is, by including a provision in the contract permitting the contractor to deduct its fee from amounts collected under the contract. The fee should be based on a percentage of the amount collected, consistent with prevailing commercial practice. See 4 CFR 102.6(b)(2).

(3) Except as authorized under paragraph (b)(2) of this section, or unless otherwise specifically provided by law, NASA must deposit all amounts recovered under collection service contracts (or by NASA employees on behalf of the agency) in the Treasury Department as miscellaneous receipts pursuant to 31 U.S.C. 3302. See 4 CFR 102.6(b)(4).

§ 1261.410 Suspension or revocation of license or eligibility; liquidation of collateral.

(a) In seeking the collection of statutory penalties, forfeitures, or debts provided for as an enforcement aid or for compelling compliance, NASA will give serious consideration to the suspension or revocation of licenses or other privileges for any inexcusable, prolonged, or repeated failure of a debtor to pay such a claim. In the case of a contractor under 48 CFR Chapter 18, NASA will comply with the debarment, suspension, and ineligibility requirements of the NASA Federal Acquisition Regulation Supplement (NASA/FAR Supplement) at 48 CFR 1809.4. Likewise, in making, guaranteeing, insuring, acquiring, or participating in loans, NASA will give serious consideration to suspending or disqualifying any lender, contractor, broker, borrower, or other debtor from doing further business with it or engaging in programs sponsored by it if such a debtor fails to pay its debts to the Government within a reasonable time. The failure of any surety to honor its obligations in accordance with 31 U.S.C. 9305 must be reported to the Treasury Department at once. Notification that a surety's certificate of authority to do business with the Federal Government has been revoked or forfeited by the Treasury Department will be forwarded by that Department to all interested agencies.

(b) If NASA is holding security or collateral which may be liquidated and the proceeds applied on debts due it through the exercise of a power of sale in the security instrument or a nonjudicial foreclosure, it should do so by such procedures if the debtor fails to pay the debt within a reasonable time after demand, unless the cost of disposing of the collateral will be disproportionate to its value or special circumstances require judicial foreclosure. NASA will provide the debtor with reasonable notice of the sale, an accounting of any surplus proceeds, and any other procedures required by applicable contract or law. Collection from other sources, including liquidation of security or collateral, is not a prerequisite to requiring payment by a surety or insurance concern unless such action is expressly required by statute or contract.

§ 1261.411 Collection in installments.

(a) Whenever feasible, and except as otherwise provided by law, debts owed to the United States, together with interest penalties, and administrative costs as required by § 1261.412, should be collected in full in one lump sum. This is true whether the debt is being collected by administrative offset or by another method, including voluntary payment. However, if the debtor is financially unable to pay the indebtedness in one lump sum, payment may be accepted in regular installments. Debtors who represent that they are unable to pay the debt in one lump sum must submit financial statements. If NASA agrees to accept payment in regular installments, it will obtain a legally enforceable written agreement from the debtor which specifies all of the terms of the arrangement and which contains a provision accelerating the debt in the event the debtor defaults. The size and frequency of installment payments should bear a reasonable relation to the size of the debt and the debtor's ability to pay. If possible, the installment payments should be sufficient in size and frequency to liquidate the Government's claim in not more than 3 years. Installment payments of less than $50 per month should be accepted only if justifiable on the grounds of financial hardship or for some other reasonable cause. If the claim is unsecured, an executed confess-judgment note, comparable to the Department of Justice Form USA-70a, should be obtained from a debtor when the total amount of the deferred installments will exceed $750. Such notes may be sought when an unsecured obligation of a lesser amount is involved. When attempting to obtain confess-judgment notes, the debtor should be provided with written explanation of the consequences of signing the note, and documentation should be maintained sufficient to demonstrate that the debtor has signed the note knowingly and voluntarily. Security for deferred payments other than a confess-judgment note may be accepted in appropriate cases. NASA, at its option, may accept installment payments notwithstanding the refusal of a debtor to execute a confess-judgment note or to give other security.

(b) If the debtor owes more than one debt and designates how a voluntary installment payment is to be applied as among those debts, that designation must be followed. If the debtor does not designate the application of the payment, agencies should apply payments to the various debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitations.

§ 1261.412 Interest, penalties, and administrative costs.

(a) Pursuant to 31 U.S.C. 3717, NASA shall assess interest, penalties, and administrative costs on debts owed to the United States. Before assessing these charges, NASA must mail or hand deliver a written notice to the debtor explaining the requirements concerning the charges (see § 1261.407(b)).

(b) Interest shall accrue from the date on which notice of the debt and the interest requirements is first mailed or hand delivered to the debtor (on or after October 25, 1982), using the most current address that is available to the agency. If an "advance billing" procedure is used—that is, a bill is mailed before the debt is actually owed—it can include the required interest notification in the advance billing, but interest may not start to accrue before the debt is actually owed. Designated officials should exercise care to ensure that the notices required by this section are dated and mailed or hand delivered on the same day.

(c) The rate of interest assessed shall be the rate of the current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate), as prescribed and published by the Secretary of the Treasury in the FEDERAL REGISTER and the Treasury Fiscal Requirements Manual Bulletins annually or quarterly, in accordance with 31 U.S.C. 3717. NASA may assess a higher rate of interest if it reasonably determines that a higher rate is necessary to protect the interests of the United States. The rate of interest, as initially assessed, shall remain fixed for the duration of the indebtedness, except that where a debtor has defaulted on a repayment agreement and seeks to enter into a new agreement, NASA may set a new interest rate which reflects the current value of funds to the Treasury Department at the time the new agreement is executed. Interest should not be assessed on interest, penalties, or administrative costs required by this section. However, if the debtor defaults on a previous repayment agreement, charges which accrued but were not collected under the defaulted agreement shall be added to the principal to be paid under a new repayment agreement.

(d) NASA shall assess against a debtor charges to cover administrative costs incurred as a result of a delinquent debt—that is, the additional costs incurred in processing and handling the debt because it became delinquent as defined in § 1261.401(b). Calculations of administrative costs should be based upon actual costs incurred or upon cost analyses establishing an average of actual additional costs incurred by the agency in processing and handling claims against other debtors in similar stages of delinquency. Administrative costs may include costs incurred in obtaining a credit report or in using a private debt collector, to the extent they are attributable to delinquency.

(e) NASA shall assess a penalty charge, not to exceed 6 percent a year, on any portion of a debt that is delinquent as defined in § 1261.401(b) for more than 90 days. This charge need not be calculated until the 91st day of delinquency, but shall accrue from the date that the debt became delinquent.

(f) When a debt is paid in partial or installment payments, amounts received by the agency shall be applied first to outstanding penalty and administrative cost charges, second to accrued interest, and third to outstanding principal.

(g) NASA must waive the collection of interest on the debt or any portion of the debt which is paid within 30 days after the date on which interest began to accrue. NASA may extend this 30-day period, on a case-by-case basis, if it reasonably determines that such action is appropriate. Also, NASA may waive, in whole or in part, the collection of interest, penalties, and/or administrative costs (assessed under this section) under the criteria specified in § 1261.414 relating to the compromise of claims (without regard to the amount of the debt), or if NASA determines that collection of these charges would be against equity and good conscience or not in the best interests of the United States. See 4 CFR 101.13(g). Such optional waivers should be handled on a case-by-case basis, in consultation with officials designated under § 1261.403. Examples of situations in which NASA may consider waiving interest and other related charges are:

(1) Pending consideration of a request for reconsideration or administrative review;

(2) Acceptance of an installment plan or other compromise agreement, where there is no indication of lack of good faith on the part of the debtor in not repaying the debt, and the debtor has provided substantiating information of inability to pay or other unavoidable hardship which reasonably prevented the debt from being repaid.

(h) Where a mandatory waiver or review statute applies, interest and related charges may not be assessed for those periods during which collection action must be suspended under § 1261.416(c)(3).

(i) *Exemptions.* (1) The provisions of 31 U.S.C. 3717 do not apply:

(i) To debts owed by any State or local government;

(ii) To debts arising under contracts which were executed prior to, and were in effect on (i.e., were not completed as of) October 25, 1982;

(iii) To debts where an applicable statute, regulation required by statute, loan agreement, or contract either prohibits such charges or explicitly fixes the charges that apply to the debts involved; or

(iv) Debts arising under the Social Security Act, the Internal Revenue Code of 1954, or the tariff laws of the United States.

(2) NASA may, however, assess interest and related charges on debts which are not subject to 31 U.S.C. 3717 to the extent authorized under the common law or other applicable statutory authority.

§ 1261.413 Analysis of costs; automation; prevention of overpayments, delinquencies, or defaults.

The Office of the NASA Comptroller will:

(a) Issue internal procedures to provide for periodic comparison of costs incurred and amounts collected. Data on costs and corresponding recovery rates for debts of different types and in various dollar ranges should be used to compare the cost effectiveness of alternative collection techniques, establish guidelines with respect to points at which costs of further collection efforts are likely to exceed recoveries, and assist in evaluating offers in compromise.

(b) Consider the need, feasibility, and cost effectiveness of automated debt collection operation.

(c) Establish internal controls to identify causes, if any, of overpayments, delinquencies, and defaults, and establish procedures for corrective actions as needs dictate.

§ 1261.414 Compromise of claims.

(a) Designated NASA officials (see § 1261.402 and § 1261.403) may compromise claims for money or property arising out of the activities of the agency where the claim, exclusive of interest, penalties, and administrative costs, does not exceed $20,000, prior to the referral of such claims to the General Accounting Office, or to the Department of Justice for litigation. The Comptroller General may exercise such compromise authority with respect to claims referred to the General Accounting Office (GAO) prior to their further referral for litigation. Only the Comptroller General may effect the compromise of a claim that arises out of an exception made by the GAO in the account of an accountable officer, including a claim against the payee, prior to its referral by the GAO for litigation.

(b) When the claim, exclusive of interest, penalties, and administrative costs, exceeds $20,000, the authority to accept the compromise rests solely with the Department of Justice. NASA should evaluate the offer, using the factors set forth in paragraphs (c) through (f) of this section, and may recommend compromise for reasons under one, or more than one, of those paragraphs. If NASA then wishes to accept the compromise, it must refer the matter to the Department of Justice, using the Claims Collection Litigation Report. See § 1261.417(e) or 4 CFR 105.2(b). Claims for which the gross amount is over $200,000 shall be referred to the Commercial Litigation Branch, Civil Division, Department of Justice, Washington, DC 20530. Claims for which the gross original amount is $200,000 or less shall be referred to the United States Attorney in whose judicial district the debtor can be found. The referral should specify the reasons for the agency's recommendation. If NASA has a debtor's firm written offer of compromise which is substantial in amount and the agency is uncertain as to whether the offer should be accepted, it may refer the offer, the supporting data, and particulars concerning the claim to the General Accounting Office or to the Department of Justice. The General Accounting Office or the Department of Justice may act upon such an offer or return it to the agency with instructions or advice. If NASA wishes to reject the compromise, GAO or Department of Justice approval is not required.

(c) A claim may be compromised pursuant to this section if NASA cannot collect the full amount because of the debtor's inability to pay the full amount within a reasonable time, or the refusal of the debtor to pay the claim in full and the Government's inability to enforce collection in full within a reasonable time by enforced collection proceedings. In determining the debtor's inability or refusal to pay, the following factors, among others, may be considered:

(1) Age and health of the debtor;

(2) Present and potential income;

(3) Inheritance prospects;

(4) The possibility that assets have been concealed or improperly transferred by the debtor;

(5) The availability of assets or income which may be realized by enforced collection proceedings; and

(6) The applicable exemptions available to the debtor under State and Federal law in determining the Government's ability to enforce collection.

Uncertainty as to the price which collateral or other property will bring at forced sale may properly be considered in determining the Government's ability to enforce collection. The compromise should be for an amount which bears a reasonable relation to the amount which can be recovered by enforced collection procedures, having regard for the exemptions available to the debtor and the time which collection will take.

(d) A claim may be compromised if there is a real doubt concerning the Government's ability to prove its case in court for the full amount claimed, either because of the legal issues involved or a bona fide dispute as to the facts. The amount accepted in compromise in such cases should fairly reflect the probability of prevailing on the legal question involved, the probabilities with respect to full or partial recovery of a judgment, paying due regard to the availability of witnesses and other evidentiary support for the Government claim, and related pragmatic considerations. In determining the litigative risks involved, proportionate weight should be given to the probable amount of court costs and attorney fees pursuant to the Equal Access to Justice Act which may be assessed against the Government if it is unsuccessful in litigation. See 28 U.S.C. 2412.

(e) A claim may be compromised if the cost of collecting the claim does not justify the enforced collection of the full amount. The amount accepted in compromise in such cases may reflect an appropriate discount for the administrative and litigative costs of collection, paying heed to the time which it will take to effect collection. Costs of collecting may be a substantial factor in the settlement of small claims, but normally will not carry great weight in the settlement of large claims. In determining whether the cost of collecting justifies enforced collection of the full amount, it is legitimate to consider the positive effect that enforced collection of some claims may have on the collection of other claims. Since debtors are more likely to pay when first requested to do so if an agency has a policy of vigorous collection of all claims, the fact that the cost of collection of any one claim may exceed the amount of the claim does not necessarily mean that the claim should be compromised. The practical benefits of vigorous collection of a small claim may include a demonstration to other debtors that resistance to payment is not likely to succeed.

(f) *Enforcement policy.* Statutory penalties, forfeitures, or debts established as an aid to enforcement and to compel compliance may be compromised pursuant to this part if the agency's enforcement policy in terms of deterrence and securing compliance, both present and future, will be adequately served by acceptance of the sum to be agreed upon. Mere accidental or technical violations may be dealt with less severely than willful and substantial violations.

(g) Compromises payable in installments are to be discouraged. However, if payment of a compromise by installments is necessary, a legally enforceable agreement for the reinstatement of the prior indebtedness less sums paid thereon and acceleration of the balance due upon default in the payment of any installment should be obtained, together with security in the manner set forth in § 1261.411, in every case in which this is possible.

(h) If the agency's files do not contain reasonably up-to-date credit information as a basis for assessing a compromise proposal, such information may be obtained from the individual debtor by obtaining a statement executed under penalty of perjury showing the debtor's assets and liabilities, income, and expenses. Forms such as Department of Justice Form OBD-500 or OBD-500B may be used for this purpose. Similar data may be obtained from corporate debtors using a form such as Department of Justice Form OBD-500C or by resort to balance sheets and such additional data as seems required. Samples of the Department of Justice forms are available from the Office of the NASA General Counsel. Neither a percentage of a debtor's profits nor stock in a debtor corporation will be accepted in compromise of a claim. In negotiating a compromise with a business concern, consideration should be given to requiring a waiver of the tax-loss-carryback rights of the debtor.

(i) *Joint and several liability.* When two or more debtors are jointly and severally liable, collection action will not be withheld against one such debtor until the other or others pay their proportionate shares. NASA will not attempt to allocate the burden of paying such claims as between the debtors but will proceed to liquidate the indebtedness as quickly as possible. Care should be taken that a compromise agreement with one such debtor does not release the agency's claim against the remaining debtors. The amount of a compromise with one such debtor shall not be considered a precedent or as morally binding in determining the amount which will be required from other debtors jointly and severally liable on the claim.

§ 1261.415 Execution of releases.

Upon receipt of full payment of a claim, or the amount in compromise of a claim as determined pursuant to § 1261.414, the official designated in § 1261.402 will prepare and execute, on behalf of the United States, an appropriate release, which shall include the provision that it shall be void if procured by fraud, misrepresentation, the presentation of a false claim, or mutual mistake of fact.

§ 1261.416 Suspending or terminating collection action.

(a) The standards set forth in this section apply to the suspension or termination of collection action pursuant to 31 U.S.C. 3711(a)(3) on claims which do not exceed $20,000, exclusive of interest, penalties, and administrative costs, after deducting the amount of partial payments or collections, if any. NASA may suspend or terminate collection action under this part with respect to claims for money or property arising out of activities of the agency, prior to the referral of such claims to the General Accounting Office or to the Department of Justice for litigation. The Comptroller General (or designee) may exercise such authority with respect to claims referred to the General Accounting Office prior to their further referral for litigation.

(b) If, after deducting the amount of partial payments or collections, if any, a claim exceeds $20,000, exclusive of interest, penalties, and administrative costs, the authority to suspend or terminate rests solely with the Department of Justice. If the designated official believes suspension or termination may be appropriate, the matter should be evaluated using the factors set forth in paragraphs (c) and (d) of this section. If the agency concludes that suspension or termination is appropriate, it must refer the matter, with its reasons for the recommendation, to the Department of Justice, using the Claims Collection Litigation Report. See § 1261.417(e) or 4 CFR 105.2(b). If NASA decides not to suspend or terminate collection action on the claim, Department of Justice approval is not required; or if it determines that its claim is plainly erroneous or clearly without legal merit, it may terminate collection action regardless of the amount involved, without the need for Department of Justice concurrence.

(c) *Suspension of collection activity*—(1) *Inability to locate debtor.* Collection action may be suspended temporarily on a claim when the debtor cannot be located after diligent effort and there is reason to believe that future collection action may be sufficiently productive to justify periodic review and action on the claim, with due consideration for the size and amount which may be realized thereon. The following sources may be of assistance in locating missing debtors: Telephone directories; city directories; postmasters; drivers' license records; automobile title and registration records; state and local government agencies; the Internal Revenue Service (see 4 CFR 102.18); other Federal agencies; employers, relatives, friends; credit agency skip locate reports, and credit bureaus. Suspension as to a particular debtor should not defer the early liquidation of security for the debt. Every reasonable effort should be made to locate missing debtors sufficiently in advance of the bar of the applicable statute of limitations, such as 28 U.S.C. 2415, to permit the timely filing of suit if such action is warranted. If the missing debtor has signed a confess-judgment note and is in default, referral of the note for the entry of judgment should not be delayed because of the debtor's missing status.

(2) *Financial condition of debtor.* Collection action may also be suspended temporarily on a claim when the debtor owns no substantial equity in realty or personal property and is unable to make payments on the Government's claim or effect a compromise at the time, but the debtor's future prospects justify retention of the claim for periodic review and action, and:

(i) The applicable statute of limitations has been tolled or started running anew; or

(ii) Future collection can be effected by offset, notwithstanding the statute of limitations, with due regard to the 10-year limitation prescribed by 31 U.S.C. 3716(c)(1); or

(iii) The debtor agrees to pay interest on the amount of the debt on which collection action will be temporarily suspended, and such temporary suspension is likely to enhance the debtor's ability to fully pay the principle amount of the debt with interest at a later date.

(3) Request for waiver or administrative review. If the statute under which waiver or administrative review is sought is "mandatory," that is, if it prohibits the agency from collecting the debt prior to the agency's consideration of the request for waiver or review (see *Califano* v. *Yamasaki*, 422 U.S. 682 (1979)), then collection action must be suspended until either: The agency has considered the request for waiver/review; or the applicable time limit for making the waiver/review request, as prescribed in a written notice, has expired and the debtor, upon notice, has not made such a request. If the applicable waiver/review statute is "permissive," that is, if it does not require all requests for waiver/review to be considered, and if it does not prohibit collection action pending consideration of a waiver/request (for example, 5 U.S.C. 5584), collection action may be suspended pending agency action on a waiver/review request based upon appropriate consideration, on a case-by-case basis, as to whether:

(i) There is a reasonable possibility that waiver will be granted or that the debt (in whole or in part) will be found not owing from the debtor;

(ii) The Government's interests would be protected, if suspension were granted, by reasonable assurance that the debt could be recovered if the debtor does not prevail; and

(iii) Collection of the debt will cause undue hardship.

(4) If the applicable statutes and regulations would not authorize refund by the agency to the debtor of amounts collected prior to agency consideration of the debtor's waiver/review request (in the event the agency acts favorably on it), collection action should ordinarily be suspended, without regard to the factors specified for permissive waivers, unless it appears clear, based on the request and the surrounding circumstances, that the request is frivolous and was made primarily to delay collection. See 4 CFR 104.2.

(d) *Termination of collection activity.* Collection activity may be terminated and NASA may close its file on the claim based on the following:

(1) Inability to collect any substantial amount. Collection action may be terminated on a claim when it becomes clear that the Government cannot collect or enforce collection of any significant sum from the debtor, having due regard for the judicial remedies available to the Government, the debtor's future financial prospects, and the exemptions available to the debtor under State and Federal law. In determining the debtor's inability to pay, the following factors, among others, may be considered: Age and health of the debtor; present and potential income; inheritance prospects; the possibility that assets have been concealed or improperly transferred by the debtor; the availability of assets or income which may be realized by enforced collection proceedings.

(2) *Inability to locate debtor.* Collection action may be terminated on a claim when the debtor cannot be located, and either:

(i) There is no security remaining to be liquidated; or

(ii) The applicable statute of limitations has run and the prospects of collecting by offset, notwithstanding the bar of the statute of limitations, are too remote to justify retention of the claim.

(3) *Cost will exceed recovery.* Collection action may be terminated on a claim when it is likely that the cost of further collection action will exceed the amount recoverable thereby.

(4) *Claim legally without merit.* Collection action should be terminated immediately on a claim whenever it is determined that the claim is legally without merit.

(5) *Claim cannot be substantiated by evidence.* Collection action should be terminated when it is determined that the evidence necessary to prove the claim cannot be produced or the necessary witnesses are unavailable and efforts to reduce voluntary payment are unavailing.

(e) *Transfer of claim.* When NASA has doubt as to whether collection action should be suspended or terminated on a claim, it may refer the claim to the General Accounting Office for advice. When a significant enforcement policy is involved in reducing a statutory penalty or forfeiture to judgment, or recovery of a judgment is a prerequisite to the imposition of administrative sanctions, such as the suspension or revocation of a license or the privilege of participating in a Government sponsored program, NASA may refer such a claim for litigation even though termination of collection activity might otherwise be given consideration under paragraphs (d)(1) and (2) of this section. Claims on which NASA holds a judgment by assignment or otherwise will be referred to the Department of Justice for further action if renewal of the judgment lien or enforced collection proceedings are justified under the criteria discussed in this section.

§ 1261.417 Referral to Department of Justice (DJ) or General Accounting Office (GAO).

(a) *Prompt referral.* Except as provided in paragraphs (b) and (c) of this section, claims on which aggressive collection action has been taken in accordance with § 1261.406 and which cannot be compromised, or on which collection action cannot be suspended or terminated, in accordance with § 1261.414 and § 1261.416, shall be promptly referred to the Department of Justice for litigation.

(1) Claims for which the gross original amount is over $200,000 shall be referred to the Commercial Litigation Branch, Civil Division, Department of Justice, Washington, DC 20530.

(2) Claims for which the gross original amount is $200,000 or less shall be referred to the United States Attorney in whose judicial district the debtor can be found. Referrals should be made as early as possible, consistent with aggressive agency collection action and the observance of the regulations contained in this subpart, and in any event, well within the period for bringing a timely suit aqainst the debtor. Ordinarily, referrals should be made within 1 year of the agency's final determination of the fact and the amount of the debt.

(3) *Minimum amount.* NASA is not to refer claims of less than $600, exclusive of interest, penalties, and administrative costs, for litigation unless:

(i) Referral is important to a significant enforcement policy; or

(ii) The debtor not only has the clear ability to pay the claim but the Government can effectively enforce payment, having due regard for the exemptions available to the debtor under State and Federal law and the judicial remedies available to the Government.

(b) Claims arising from audit exceptions taken by the GAO to payments made by agencies must be referred to the GAO for review and approval prior to referral to the Department of Justice for litigation, unless NASA has been granted an exception by the GAO. Referrals shall comply with instructions, including monetary limitations, contained in the GAO Policy and Procedures Manual for Guidance to Federal Agencies and paragraphs (e) and (f) of this section.

(c) When the merits of the claim, the amount owed on the claim, or the propriety of acceptance of a proposed compromise, suspension, or termination are in doubt, the designated official should refer the matter to the General Accounting Office for resolution and instructions prior to proceeding with collection action and/or referral to the Department of Justice for litigation.

(d) Once a claim has been referred to GAO or to the Department of Justice pursuant to this section, NASA shall refrain from having any contact with the debtor about the pending claim and shall direct the debtor to GAO or to the DJ, as appropriate, when questions concerning the claim are raised by the debtor. GAO or the DJ, as appropriate, shall be immediately notified by NASA of any payments which are received from the debtor subsequent to referral of a claim under this section.

(e) *Claims Collection Litigation Report (CCLR).* Unless an exception has been granted by the Department of Justice in consultation with the General Accounting Office, the Claims Collection Litigation Report (CCLR), which was officially implemented by NASA, effective March 1, 1983, shall be used with all referrals of administratively uncollectible claims. As required by the CCLR, the following information must be included:

(1) *Report of prior collection actions.* A checklist or brief summary of the actions previously taken to collect or compromise the claim. If any of the administrative collection actions have been omitted, the reason for their omission must be provided. GAO, the United States Attorney, or the Civil Division of the Department of Justice may return claims at their option when there is insufficient justification for the omission of one or more of the administrative collection actions enumerated in this subpart (see 4 CFR Part 102).

(2) *Current address of debtor.* The current address of the debtor, or the name and address of the agent for a corporation upon whom service may be made. Reasonable and appropriate steps will be taken to locate missing parties in all cases. Referrals to the Department of Justice for the commencement of foreclosure of other proceedings, in which the current address of any party is unknown, will be accompanied by a listing of the prior known addresses of such party and a statement of the steps taken to locate that party.

(3) *Credit data.* Reasonably current credit data which indicates that there is a reasonable prospect of effecting enforced collection from the debtor, having due regard for the exemptions available to the debtor under State and Federal law and the judicial remedies available to the Government. Such credit data may take the form of:

(i) A commercial credit report;

(ii) An agency investigative report showing the debtor's assets, liabilities, income, and expenses;

(iii) The individual debtor's own financial statement executed under penalty of perjury reflecting the debtor's assets, liabilities, income, and expenses; or

(iv) An audited balance sheet of a corporate debtor.

(4) Reasons for credit data omissions. The credit data may be omitted if:

(i) A surety bond is available in an amount sufficient to satisfy the claim in full;

(ii) The forced sale value of the security available for application to the Government's claim is sufficient to satisfy the claim in full;

(iii) NASA wishes to liquidate loan collateral through judicial foreclosure but does not desire a deficiency judgment;

(iv) The debtor is in bankruptcy or receivership;

(v) The debtor's liability to the Government is fully covered by insurance, in which case NASA will furnish such information as it can develop concerning the identity and address of the insurer and the type and amount of insurance coverage; or

(vi) The status of the debtor is such that credit data is not normally available or cannot reasonably be obtained, for example, a unit of State or local government.

(f) *Preservation of evidence.* Care will be taken to preserve all files, records, and exhibits on claims referred or to be referred to the Department of Justice for litigation. Under no circumstances should original documents be sent to the Department of Justice or the United States Attorney without specific prior approval to do so. Copies of relevant documents should be sent whenever necessary.

Subpart 1261.5—Administrative Offset of Claims

SOURCE: 52 FR 19487, May 26, 1987, unless otherwise noted.

§ 1261.500 Scope of subpart.

(a) This subpart applies to collection of claims by administrative offset under section 5 of the Federal Claims Collection Act of 1966 as amended by the Debt Collection Act of 1982 (31 U.S.C. 3716), other statutory authority, or the common law; it does not include "Salary Offset," which is governed by Subpart 1261.6, infra. Consistent with 4 CFR 102.3, collection by administrative offset will be undertaken by NASA on all liquidated or certain in amount claims in every instance in which such collection is determined to be feasible and not otherwise prohibited.

(b) Whether collection by administrative offset is feasible is a determination to be made by NASA on a case-by-case basis, in the exercise of sound discretion. NASA will consider not only whether administrative offset can be accomplished, both practically and legally, but also whether offset is best suited to further and protect all of the Government's interests. In appropriate circumstances, NASA may give due consideration to the debtor's financial condition; or whether offset would tend to substantially interfere with or defeat the purposes of the program authorizing the payments against which offset is contemplated. For example, under a grant program in which payments are made in advance of the grantee's performance, offset will normally be inappropriate.

(c) NASA is not authorized by 31 U.S.C. 3716 to use administrative offset with respect to:

(1) Debts owed by any State or local Government;

(2) Debts arising under or payments made under the Social Security Act, the Internal Revenue Code of 1954, or the tariff laws of the United States; or

(3) Any case in which collection of the type of debt involved by administrative offset is explicitly provided for or prohibited by another statute. However, unless otherwise provided by contract or law, debts or payments which are not subject to administrative offset under 31 U.S.C. 3716 may be collected by administrative offset under the common law or other applicable statutory authority.

§ 1261.501 Definition.

Administrative offset—the term, as defined in 31 U.S.C. 3701(a)(1), means "withholding money payable by the United States Government to, or held by the Government for, a person to satisfy a debt the person owes the Government."

§ 1261.502 Notification procedures.

(a) Before collecting any claims through administrative offset, a 30-day written notice must be sent to the debtor by certified mail, return receipt requested. The notice must include:

(1) The nature and amount of the debt;

(2) NASA's intention to collect by administrative offset; and

(3) An explanation of the debtor's rights under 31 U.S.C. 3716(a), or other relied upon statutory authority, which must include a statement that the debtor has the opportunity, within the 30-day notice period, to:

(i) Inspect and copy records of NASA with respect to the debt;

(ii) Request a review by NASA of its decision related to the claim; and

(iii) Enter into a written agreement with the designated official (see § 1261.402) to repay the amount of the claim. However, sound judgment should be exercised in determining whether to accept a repayment agreement in lieu of offset. The determination should balance the Government's interest in collecting the debt against fairness to the debtor. If the debt is delinquent and the debtor has not disputed its existence or amount, NASA should accept a repayment agreement in lieu of offset only if the debtor is able to establish that offset would result in undue financial hardship or would be against equity and good conscience.

(b) NASA may effect administrative offset against a payment to be made to a debtor prior to the completion of the procedures required by paragraph (a) of this section if:

(1) Failure to take the offset would substantially prejudice the Government's ability to collect the debt; and

(2) The time before the payment is to be made does not reasonably permit the completion of those procedures. Such prior offset must be promptly followed by the completion of those procedures. Amounts recovered by offset but later found not to be owed to the Government shall be promptly refunded.

(3) In cases where the procedural requirements of paragraph (a) of this section had previously been provided to the debtor in connection with the same debt under some other statutory or regulatory authority, such as pursuant to a notice of audit disallowance or salary offset under § 1261.603, the agency is not required to duplicate those requirements before taking administrative offset.

§ 1261.503 Agency records inspection; hearing or review.

(a) NASA shall provide the debtor with a reasonable opportunity for an "oral hearing" when:

(1) An applicable statute authorizes or requires the agency to consider waiver of the indebtedness involved, the debtor requests waiver of the indebtedness, and the waiver determination turns on an issue of credibility or veracity; or

(2) The debtor requests reconsideration of the debt and the agency determines that the question of the indebtedness cannot be resolved by review of the documentary evidence, for example, when the validity of the debt turns on an issue of credibility or veracity. Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary-type hearing, although significant matters discussed at the hearing should be carefully documented. See 4 CFR 102.3(c)(1). Such hearing may be an informal discussion/interview with the debtor, face-to-face meeting between debtor and cognizant NASA personnel, or written formal submission by the debtor and response by the NASA cognizant personnel with an opportunity for oral presentation. The hearing will be conducted before or in the presence of an official designated by the NASA General Counsel or designee on a case-by-case basis. The decision of the reviewing/hearing official should be communicated in writing (no particular form is required) to the affected parties, and will constitute the final administrative decision of the agency.

(b) Paragraph (a) of this section does not require an oral hearing with respect to debt collection systems in which determinations of indebtedness or waiver rarely involve issues of credibility or veracity and NASA has determined that review of the written record is ordinarily an adequate means to correct prior mistakes. In administering such a system, the agency is not required to sift through all of the requests received in order to accord oral hearings in those few cases which may involve issues of credibility or veracity. See 4 CFR 102.3(c)(2).

(c) In those cases where an oral hearing is not required or granted, NASA will nevertheless accord the debtor a "paper hearing"—that is, the agency will make its determination on the request for waiver or reconsideration based upon a review of the available written record. See 4 CFR 102.3(c)(3). In such case, the responsible official or designee shall refer the request to the appropriate NASA legal counsel for review and determination by counsel or designee.

(d) A request to inspect and/or copy the debtor's own debt records or related files, and/or for a hearing or review accompanied by a statement of the basis or grounds for such hearing or review, must be submitted within 30 calendar days of the receipt of the written notice under § 1261.502(a). A reasonable time to inspect and copy records will be provided during official working hours, but not to exceed 5 business days, unless a verified statement showing good cause requires a longer period. Any suspension of collection or other charges during the period of the inspection, or hearing or review, shall comply with § 1261.412 and § 1261.416. Requests for or consideration of compromising the debt must comply with § 1261.414.

§ 1261.504 Interagency requests.

(a) Requests to NASA by other Federal agencies for administrative offset should be in writing and forwarded to the Office of the NASA Comptroller, NASA Headquarters, Washington, DC 20546.

(b) Requests by NASA to other Federal agencies holding funds payable to the debtor should be in writing and forwarded, certified return receipt, as specified by that agency in its regulations; however, if such rule is not readily available or identifiable, the request should be submitted to that agency's office of legal counsel with a request that it be processed in accordance with their internal procedures.

(c) Requests to and from NASA should be processed within 30 calendar days of receipt. If such processing is impractical or not feasible, notice to extend the time period for another 30 calendar days should be forwarded 10 calendar days prior to the expiration of the first 30-day period.

(d) Requests from or to NASA must be accompanied by a certification that the debtor owes the debt (including the amount) and that the provisions of (or comparable to) Subpart 1261.5 or Subpart 1261.6, as applicable, have been fully complied with. NASA will cooperate with other agencies in effecting collection.

§ 1261.505 Multiple debts.

When collecting multiple debts by administrative offset, NASA will apply the recovered amounts to those debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitations.

§ 1261.506 Limitation periods.

NASA may not initiate administrative offset to collect a debt under 31 U.S.C. 3716 more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the official or officials of the Government who were charged with the responsibility to discover and collect such debts. Determination of when the debt first accrued is to be made in accordance with existing law regarding the accrual of debts, such as under 28 U.S.C. 2415. See 4 CFR 102.3(b)(3).

§ 1261.507 Civil Service Retirement and Disability Fund.

(a) Unless otherwise prohibited by law, NASA may request that moneys which are due and payable to a debtor from the Civil Service Retirement and Disability Fund be administratively offset in reasonable amounts in order to collect in one full payment or a minimal number of payments debts owed to the United States by the debtor. Such requests shall be made to the appropriate officials of the Office of Personnel Management (OPM) in accordance with the OPM regulations (see 5 CFR 831.1801, *et seq.*).

(b) When making a request for administrative offset under paragraph (a) of this section, NASA shall include a written certification that:

(1) The debtor owes the United States a debt, including the amount of the debt;

(2) NASA has complied with the applicable statutes, regulations, and procedures of the Office of Personnel Management; and

(3) NASA has complied with the requirements of this Subpart 1261.5 which implements 4 CFR 102.3, including any required hearing or review.

(c) Once NASA has decided to request administrative offset under this section, the request should be made as soon as practical after completion of the applicable procedures in order that the Office of Personnel Management may identify and "flag" the debtor's account in anticipation of the time when the debtor requests or becomes eligible to receive payments from the Fund. This will satisfy any requirement that offset be initiated prior to expiration of the applicable statute of limitations. At such time as the debtor makes a claim for payments from the Fund, if at least a year has elapsed since the offset request was originally made, the debtor should be permitted to offer a satisfactory repayment plan in lieu of offset upon establishing that changed financial circumstances would render the offset unjust.

(d) If NASA collects part or all of the debt by other means before deductions are made or completed pursuant to paragraph (a) of this section, the designated official should act promptly to modify or terminate the agency's request to OPM for offset.

(e) OPM is not required or authorized by 4 CFR 102.4 to review the merits of NASA's determination with respect to:

(1) The amount and validity of the debt;

(2) Waiver under an applicable statute; or

(3) Provide or not provide an oral hearing.

§ 1261.508 Offset against a judgment.

Collection by offset against a judgment obtained by a debtor against the United States shall be accomplished in accordance with 31 U.S.C. 3728.

Subpart 1261.6—Collection by Offset From Indebted Government Employees

Source: 52 FR 19487, May 26, 1987, unless otherwise noted.

§ 1261.600 Purpose of subpart.

This subpart implements 5 U.S.C. 5514 in accordance with the OPM regulation and establishes the procedural requirements for recovering pre-judgment debts from the current pay account of an employee through what is commonly called salary offset, including a situation where NASA (the current paying agency) is not the employee's creditor agency. Salary offset to satisfy a judgment or a court determined debt is governed by section 124 of Pub. L. 97-276 (October 2, 1982), 5 U.S.C. 5514 *note.*

§ 1261.601 Scope of subpart.

(a) Coverage. This subpart applies to agencies and employees as defined in § 1261.602.

(b) Applicability. This subpart and 5 U.S.C. 5514 apply in recovering certain prejudgment debts by administrative offset except where the employee consents to the recovery, from the current pay account of an employee. Because it is an administrative offset, debt collection procedures for salary offset which are not specified in 5 U.S.C. 5514 and this subpart should be consistent with Subpart 1261.5.

(1) Excluded debts or claims. The procedures contained in this subpart do not apply to debts or claims arising under the Internal Revenue Code of 1954 as amended (26 U.S.C. 1 *et seq.*), the Social Security Act (42 U.S.C. 301 *et seq.*), or the tariff laws of the United States; or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (e.g., travel advances in 5 U.S.C. 5705, employee training expenses in 5 U.S.C. 4108, and debts determined by a court as provided in 5 U.S.C. 5514 *note*).

(2) Waiver requests and claims to the General Accounting Office. This subpart does not preclude an employee from requesting waiver of a salary overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, or in any way questioning the amount or validity of a debt by submitting a subsequent claim to the General Accounting Office in accordance with procedures prescribed by the General Accounting Office. Similarly, in the case of other types of debts, it does not preclude an employee from requesting waiver, if waiver is available under any statutory provision pertaining to the particular debt being collected.

§ 1261.602 Definitions.

For purposes of this subpart:

(a) *Agency* means:

(1) An Executive agency as defined in section 105 of title 5, United States Code, including U.S. Postal Service and the U.S. Postal Rate Commission;

(2) A military department as defined in section 102 of Title 5, United States Code;

(3) An agency or court in the judicial branch, including a court as defined in section 610 of Title 28, United States Code, the District Court for the Northern Mariana Islands, and the Judicial Panel on Multidistrict Litigation;

(4) An agency of the legislative branch, including the U.S. Senate and the U.S. House of Representatives; and

(5) Other independent establishments that are entities of the Federal Government.

(b) *Creditor agency* means the agency to which the debt is owed.

(c) *Debt* means an amount owed to the United States from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources.

(d) *Disposable pay* means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld. NASA must exclude deductions listed in OPM's garnishment regulations at 5 CFR 581.105 (b) through (f) to determine disposable pay subject to salary offset.

(e) *Employee* means a current employee of an agency, including a current member of the Armed Forces or a Reserve of the Armed Forces (Reserves).

(f) *Paying agency* means the agency employing the individual and authorizing the payment of his or her current pay.

(g) *Salary offset* means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his or her consent.

(h) *Waiver* means the cancellation, remission, forgiveness, or nonrecovery of a debt allegedly owed by an employee to an agency as permitted or required by 5 U.S.C. 8346(b), or any other law.

§ 1261.603 Procedures for salary offset.

If NASA is both the paying and creditor agency, the following requirements must be met before a deduction is made from the current pay account of an employee.

(a) *Written notice.* The employee must be sent a minimum of 30 days written notice, which specifies:

(1) The origin, nature and amount of the indebtedness, and the official to contact within the agency (ordinarily, the designated financial management official for the particular installation);

(2) The intention of the agency to initiate collection of the debt through salary offset by deductions from the employee's current disposable pay, stating the amount, frequency, proposed beginning date, and duration of intended deductions (the amount to be deducted for any period, without the consent of the employee, may not exceed 15 percent of disposable pay);

(3) An explanation of any interest, penalties, or administrative costs included in the amount, and that such assessment must be made unless excused in accordance with 14 CFR 1261.412;

(4) The right for an opportunity (which does not toll the running of the 30-day period) to inspect and copy NASA records relating to the debt or to request and receive (if reasonable) a copy of such records, provided that such opportunity must be exercised on or before the 15th day following receipt of the notice and can be conducted only during official working hours for a reasonable period of time not to exceed 5 working days;

(5) If not previously provided, the opportunity (under terms agreeable to NASA) to establish a schedule for the voluntary repayment of the debt or to enter into a written agreement to establish a schedule for repayment of the debt in lieu of offset. The agreement must be in writing, signed by both the employee and the authorized agency official (see 14 CFR 1261.402) and documented in NASA's files (see 14 CFR 1261.407(d));

(6) An opportunity for a hearing, as provided in paragraph (c) of this section, on the agency's determination concerning the existence and amount of the debt, and the terms of the repayment schedule (in the case of an employee whose repayment schedule

is established other than by written agreement);

(7) The hearing request should be addressed to the Office of the NASA General Counsel or to the Office of Chief Counsel of the NASA installation involved, as appropriate; counsel's name and address will be as stated in the notice.

(8) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; and

(9) Unless there are applicable contractual or statutory provisions to the contrary, that amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee.

(b) *Exception to entitlement to written notice.* NASA is not required to comply with paragraph (a) of this section for any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less.

(c) *Petition filing; hearing; decision and review.* The notice described in paragraph (a) of this section should include the following provisions, which may be copied and attached to the notice.

(1) The employee may petition for a hearing, but such petition must be in writing and received by NASA on or before the 15th day following receipt of the notice, and include a statement of the reasons for such hearing. No particular form is required, and a timely, legible letter request (with the stated reasons) will suffice; however, the employee must sign the petition and include with it, with reasonable specificity, all the supporting facts and evidence, including a list of the witnesses, if any.

(2) The petition should be addressed to the agency counsel designated in the notice, but the hearing will be conducted by an official not under the supervision or control of the NASA Administrator or by appointment of an administrative law judge. Notice of the name and address of the hearing official will be sent to the employee within 10 days of receipt of petition. A hearing official will be designated on a case-by-case basis under reimbursable arrangements or through direct payment as events may warrant.

(3) The timely filing of the petition will stay the commencement of collection; and the final decision on the hearing will be issued at the earliest practicable date, but not later than 60 days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceedings.

(4) Any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(i) Disciplinary procedures appropriate under Chapter 75 of Title 5, United States Code, 5 CFR Part 752, or any other applicable statutes or regulations;

(ii) Penalties under the False Claims Act, sections 3729 through 3731 of Title 31, United States Code, or any other applicable statutory authority; or

(iii) Criminal penalties under sections 286, 287, 1001, and 1002 of Title 18, United States Code, or any other applicable statutory authority.

(5) The form and content of the hearing will be determined by the hearing official depending on the nature and complexity of the transaction giving rise to the debt. The hearing is not an adversarial adjudication, and need not take the form of an evidentiary hearing. However, depending on the particular facts and circumstances, the hearing may be analogous to a fact-finding proceeding with oral presentations; or an informal meeting with or interview of the employee; or formal written submissions, with an opportunity for oral presentation, and decision based on the available written record. Ordinarily, hearings may consist of informal conferences before the hearing official in which the employee and agency officials will be given full opportunity to present evidence, witnesses, and argument. The employee may represent himself or herself or be represented by an individual of his or her choice. The hearing official must maintain a summary record of the hearing provided under this subpart.

For additional guidance, see 14 CFR 1261.503.

(6) The decision will be in writing and state:

(i) The facts purported to evidence the nature and origin of the alleged debt;

(ii) The respective positions of the agency and of the employee;

(iii) The hearing official's analysis (which address the employee's/agency's grounds, the amount and validity of the alleged debt, and, where applicable, the repayment schedule); and

(iv) The hearing official's findings and conclusions.

(7) The hearing official will notify the employee, the NASA Comptroller or designee, and the designated agency counsel of the decision.

(8) The decision of the hearing official shall constitute the Final Administrative Decision of the agency.

(d) Petition after time expiration. No petition for a hearing is to be granted if made after the 15-day period prescribed in paragraph (c)(1) of this section, unless the employee can show to the satisfaction of the agency official indicated on the notice that the delay was caused by circumstances beyond his or her control (for example, proven incapacity, illness, or hospitalization), or that the agency did not give notice of the time limit and the employee was otherwise unaware of such limit.

(e) *Limitation on amount and duration of deductions.* Ordinarily, debts must be collected in one lump-sum payment. However, if the employee is financially unable to pay in one lump sum or if the amount of the debt exceeds 15 percent of disposable pay for an officially established pay interval, collection must be made in installments. The size of installment deductions must bear a reasonable relationship to the size of the debt and the employee's ability to pay (see 14 CFR 1261.411), but the amount deducted for any period must not exceed 15 percent of the disposable pay from which the deduction is made (unless the employee has agreed in writing to the deduction of a greater amount). Deduction must commence with the next full pay interval (ordinarily, the next biweekly pay period). Such installment deductions must be made over a period not greater than the anticipated period of active duty or employment, as the case may be, except as provided in paragraph (f) of this section.

(f) *Determining ability to pay.* An offset may produce an extreme financial hardship for an employee if it prevents the employee from meeting costs necessarily incurred for essential subsistence expenses for food, reasonable housing, clothing, transportation, and medical care. In determining whether an offset would prevent the employee from meeting the essential subsistence expenses, the employee may be required to show income from all sources (including spouse and dependents, if applicable), list all known assets, explain exceptional expenses, and produce any other relevant factors.

(g) *Liquidation from final check; other recovery.* If the employee retires or resigns from Federal service, or if his or her employment or period of active duty ends before collection of the debt is completed, the balance may be deducted from the final salary payment and any remaining balance from the lump-sum leave, if applicable. If the debt is not fully paid by offset from any final payment due the former employee as of the date of separation, offset may be made from later payments of any kind due the former employee from the United States (as provided in 14 CFR Part 1261 Subpart 1261.5, including offset from the Civil Service Retirement and Disability Fund under 14 CFR 1261.507).

(h) *Interest, penalties, and administrative costs.* Assessment of interest, penalties, and administrative costs, on debts being collected under this subpart, shall be in accordance with 14 CFR 1261.412 which implements 4 CFR 102.13.

§ 1261.604 Nonwaiver of rights by involuntary setoff.

The employee's involuntary payment of all or any portion of the debt, being collected under this subpart, must not be construed as a waiver of any rights which the employee may have under an existing written contract applicable to the specific debt or under any other pertinent statutory authority for the collection of claims of the United States or the agency.

§ 1261.605 Refunds.

(a) NASA will promptly refund to the employee amounts paid or deducted under this subpart when:

(1) A debt is waived or otherwise found not owing the United States (unless expressly prohibited by statute or regulation); or

(2) The employee's paying agency is directed by an administrative or judicial order to refund amounts deducted from his or her current pay.

(b) Refunds are not to bear any interest unless the law applicable to that particular debt specifically requires or permits a stated interest amount on refunds.

§ 1261.606 Salary offset request by a creditor agency other than NASA (the current paying agency).

(a) *Format of the request.* Upon completion of the procedures established by the creditor agency under 5 U.S.C. 5514, the creditor agency must:

(1) Certify, in writing, that the employee owes the debt, the amount and basis of the debt, the date on which payment(s) is/are due, the date the Government's right to collect the debt first accrued, and that the creditor agency's regulations implementing 5 U.S.C. 5514 have been approved by OPM;

(2) If the collection must be made in installments, the creditor agency must also advise NASA of the number of installments to be collected, the amount of each installment, and the commencing date of the first installment, if a date other than the next officially established pay period is required; and

(3) Unless the employee has consented to the salary offset in writing or signed a statement acknowledging receipt of the required procedures and the writing or statement is attached to the debt claim request, the creditor agency must also indicate the action(s) taken under 5 U.S.C. 5514(a)(2) and give the date(s) the action(s) was/were taken.

(b) *Limitation period.* The creditor agency may not initiate offset to collect a debt more than 10 years after the Government's right to collect the debt first accrued, except as provided in 14 CFR 1261.506, which implements 4 CFR 102.3(b)(3).

(c) *Employees who are separating or have separated*— (1) *Employees who are in the process of separating.* If the employee is in the process of separating, the creditor agency must submit its debt claim to the employee's paying agency for collection as provided in 5 CFR 550.1104(1) of the OPM regulations (14 CFR 1261.603(f)) for "liquidation from final check." NASA must then certify the total amount of its collection and notify the creditor agency and the employee as provided in paragraph (c)(3) of this section. If NASA is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, or other similar payments, it should notify the creditor agency and forward the copy of the debt claim and certification to the agency responsible for making such payments as notice that a debt is outstanding. However, the creditor agency, not NASA, must submit a properly certified claim to the agency responsible for making such payments before collection can be made.

(2) *Employees who have already separated.* If the employee is already separated and all payments due from NASA have been paid, NASA must return the claim to the creditor agency for any further collection, indicating the employee's date of separation and the current employment and mailing address(es), if known.

(3) Employee who transfers from NASA to another Federal agency.

(i) *Certification of amount collected.* If, after the creditor agency has submitted the debt claim to NASA, the employee transfers to another Federal agency before the debt is collected in full, NASA must then certify the total amount of the collection made on the debt. A copy of the certification should be furnished the employee, and another copy furnished to the creditor agency along with notice of the employee's transfer.

(ii) *Official personnel folder insertion; new paying agency.* Information on the debt claim must be inserted in the employee's official personnel folder along with a copy of the certification of the amount which has been collected. Upon receiving the official personnel folder, the new paying agency must resume the collection from the employee's current pay account and notify the employee and the creditor agency of the resumption. It will not be necessary for the creditor agency to repeat the due process procedures described by 5 U.S.C. 5514 of this subpart in order to resume the collection. However, it will be the responsibility of the creditor agency to review the debt upon receiving NASA's notice of the employee's transfer to make sure the collection is resumed by the new paying agency.

(d) *Processing the debt claim upon receipt*—(1) *Incomplete claim.* If NASA receives incomplete debt claim information, it must return the request with a notice that procedures under 5 U.S.C. 5514 and this subpart must be provided and complete debt claim information received before action will be taken to collect from the employee's current pay account.

(2) *Complete claim.* If NASA receives a properly documented debt claim, deductions should be scheduled to begin prospectively at the next officially established pay interval. A copy of the debt claim request must be given to the debtor, along with notice of the date deductions will commence if different from that stated on the debt claim request.

(3) NASA is not required or authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the debt as stated in the debt claim request.

§ 1261.607 Obtaining the services of a hearing official.

(a) When the debtor does not work for the creditor agency and the creditor agency cannot provide a prompt and appropriate hearing before an administrative law judge or before a hearing official furnished pursuant to another lawful arrangement, the creditor agency may contact an agent of the paying agency designated in Appendix A of 5 CFR Part 581 to arrange for a hearing official, and the paying agency must then cooperate as provided by 4 CFR 102.1 and provide a hearing official.

(b) When the debtor works for the creditor agency, the creditor agency may contact any agent (of another agency) designated in Appendix A of 5 CFR Part 581 to arrange for a hearing official. Agencies must then cooperate as required by 4 CFR 102.1 and provide a hearing official.

PART 1262—EQUAL ACCESS TO JUSTICE ACT IN AGENCY PROCEEDINGS

Subpart 1262.1—General Provisions

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SOURCE: 51 FR 15311, Apr. 23, 1986, unless otherwise noted.

Subpart 1262.1—General Provisions

§ 1262.101 Purpose of these rules.

(a) The pertinent provisions of the Equal Access to Justice Act at 5 U.S.C. 504 (hereinafter "the Act") provide for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called "adversary adjudications"). An eligible party may receive an award when it prevails, unless it has unreasonably protracted the proceedings, or the Agency's position in the proceeding was substantially justified, or special circumstances make an award unjust. The rules in this part describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that the National Aeronautics and Space Administration (NASA) will use in determining awards.

(b) As used in this part:

(1) *Adversary adjudication* means an adjudication under 5 U.S.C. 554 in which the position of the United States is represented by counsel or otherwise, but excludes an adjudication for the purpose of establishing or fixing a rate or for the purpose of granting or renewing a license;

(2) *Adjudicative officer* means the deciding official, without regard to whether the official is designated an administrative law judge, a hearing officer or examiner, or otherwise, who presided at the adversary adjudication;

(3) *Position of the agency* means, in addition to the position taken by the agency in the adversary adjudication, the action or failure to act by the agency upon which the adversary adjudication is based;

(4) *Party*, as defined in 5 U.S.C. 551(3), includes a person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in an agency proceeding, and a person or agency admitted by an agency as a party for limited purposes, and who meets the eligibility requirements of § 1262.104; and

(5) *Agency* with a capital A denotes the NASA.

(c) Determination of *Substantially justified*. Whether or not the position of the agency was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought.

§ 1262.102 When the Act applies.

The Act applies to any adversary adjudication pending or commenced before NASA on or after August 5, 1985. It also applies to any adversary adjudication commenced on or after October 1, 1984, and finally disposed of before August 5, 1985, provided that an application for fees and expenses, as described in Subpart 1262.2, had been filed with the Agency within 30 days after August 5, 1985, and to any adversary adjudication pending on or commenced on or after October 1, 1981, in which an application for fees and other expenses was timely filed and was dismissed for lack of jurisdiction.

§ 1262.103 Proceedings covered.

(a) The Act applies to adversary adjudications conducted by the Agency. These are:

(1) Adjudications under 5 U.S.C. 554 in which the position of NASA or any other agency of the United States, or any component of an agency, is presented by an attorney or other representative who enters an appearance and participates in the proceedings; and

(2) Appeals of decisions made pursuant to section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) before the Agency's Board of Contract Appeals (BCA) as provided in Section 8 of that Act (41 U.S.C. 607). Any proceeding in which this Agency may prescribe a lawful present or future rate is not covered by the Act. Proceedings to grant or renew licenses are also excluded, but proceedings to modify, suspend, or revoke licenses are covered if they are otherwise adversary adjudications. The Act does not include proceedings which are covered by a compromise or settlement agreement, unless specifically consented to in such agreement. For NASA, the types

of proceedings covered include those before the NASA BCA as described in paragraph (a)(2) of this section.

(b) NASA may also designate a proceeding as an adversary adjudication for purposes of the Act by so stating in an order initiating the proceeding or designating the matter for hearing. The Agency's failure to designate a proceeding as an adversary adjudication shall not preclude the filing of an application by a party who believes the proceeding is covered by the Act; whether the proceeding is covered will then be an issue for resolution in proceedings on the application.

(c) If a proceeding includes both matters covered by the Act and matters specifically excluded from coverage, any award made will include only fees and expenses related to covered issues.

§ 1262.104 Eligibility of applicants.

(a) To be eligible for an award of attorney fees and other expenses, the applicant must be a "party" to the adversary adjudication for which an award is sought. The applicant must show that it meets all conditions of eligibility set out in this subpart and in Subpart 1262.2.

(b) The types of eligible applicants are as follows:

(1) An individual with a net worth of not more than $2 million;

(2) Any owner of an unincorporated business who has a net worth of not more than $7 million, including both personal and business interests, and not more than 500 employees;

(3) A charitable or other tax-exempt organizaiton described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act 12 U.S.C. 1441j(a)) with not more than 500 employees; and

(5) Any other partnership, corporation, association, unit of local government, or organization with a net worth of not more than $7 million and not more than 500 employees.

(c) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the proceeding was initiated.

(d) An applicant who owns an unincorporated business will be considered as an "individual" rather than as a "sole owner of an unincorporated business" if the issues on which the applicant prevails are related primarily to personal interests rather then to business interests.

(e) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(f) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation, or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this part, unless the adjudicative officer determines that such treatment would be unjust and contrary to the purposes of the Act in light of the actual relationship between the affiliated entities. In addition, the adjudicative officer may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(g) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

§ 1262.105 Standards for awards.

(a) A prevailing applicant may receive an award subject to paragraph (b) of this section, for fees and expenses incurred in connection with a proceeding, or in a significant and discrete substantive portion of the proceeding, unless the position of the agency over which the applicant has prevailed was substantially justified. No presumption arises that the agency's position was not substantially justified simply because the agency did not prevail. The burden of proof that an award should not be made to an eligible prevailing applicant is on the agency.

(b) An award, for any portion of the adversary adjudication, will be denied if the applicant has unreasonably protracted the proceedings, or denied or reduced if special circumstances make the award sought unjust.

§ 1262.106 Allowable fees and expenses.

(a) Awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents, and expert witnesses, even if the services were made available without charge or at a reduced rate to the applicant.

(b) No award for the fee of an attorney or agent under these rules may exceed $75 per hour. No award to compensate an expert witness may exceed the highest rate at which this Agency pays expert witnesses, which is $20 an hour (5 hours maximum) or maximum daily rate of $100 (3 days maximum). However, an award may also include the reasonable expenses of the attorney, agent, or witness as a separate item, if the attorney, agent, or witness ordinarily charges clients separately for such expenses.

(c) In determining the reasonableness of the fee sought for an attorney, agent, or expert witness, the adjudicative officer shall consider the following:

(1) If the attorney, agent, or witness is in private practice, his or her customary fee for similar service, or, if an employee of the applicant, the fully allocated cost of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent, or witness ordinarily performs services;

(3) The time actually spent in the representation of the application;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(5) Such other factors as may bear on the value of the services provided.

(d) The reasonable cost of any study, analysis, engineering report, test, project, or similar mater prepared on behalf of a party may be awarded, to the extent that the charge for the service does not exceed the prevailing rate for similar services, and the study or other matter was necessary for preparation of the applicant's case.

§ 1262.107 Rulemaking on maximum rates for attorney fees.

(a) If warranted by an increase in the cost of living or by special circumstances (such as limited availability of attorneys qualified to handle certain types of proceedings), the Agency may adopt regulations providing that attorney fees may be awarded at a rate higher then $75 per hour in some or all of the types of proceedings covered by this part. This Agency will conduct any rulemaking proceedings for this purpose under the informal rulemaking procedures of the Administrative Procedure Act (5 U.S.C. 553).

(b) Any person may file with the Agency a petition for rulemaking to increase the maximum rate for attorney fees. The petition should be addressed to the General Counsel, NASA Headquarters, Washington, DC 20546; should identify the rate the petitioner believes the Agency should establish and the types of proceedings in which the rate should be used; and should also explain fully the reasons why the higher rate is warranted. The Agency will respond to the petition within 60 days after it is filed, by initiating a rulemaking proceeding or denying the petition, or taking other appropriate action.

§ 1262.108 Awards against other agencies.

If an applicant is entitled to an award because it prevails over another agency of the United States that participates in a proceeding before NASA, the award or an appropriate portion of the award shall be made against that agency, subject to § 1262.105(b), if it had taken a position that is not substantially justified.

§ 1262.109 Delegations of authority.

(a) The NASA Administrator hereby delegates authority to the General Counsel or designee to take final action on matters pertaining to the Act, other than the authority for final fee determination after Agency review pursuant to § 1262.308.

(b) The NASA Administrator may, in particularly specified matters under the Act, delegate authority to officials other than those designated in paragraph (a) of this section.

Subpart 1262.2—Information Required from Applicants

§ 1262.201 Contents of application.

(a) An application for an award of fees and expenses under the Act shall identify the applicant and the proceeding for which an award is sought. The application shall show that the applicant has prevailed and identify the position of an agency or agencies in the proceeding that the applicant alleges was not substantially justified. Unless the applicant is an individual, the application shall also state the number of employees of the applicant and describe briefly the type and purpose of its organization or business.

(b) The application shall also include a statement that the applicant's net worth does not exceed $2 million (if an individual) or $7 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if the applicant:

(1) Attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)), or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(2) States that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)).

(c) The application shall state the amount of fees and expense for which an award is sought.

(d) The application may also include any other matters that the applicant wishes this Agency to consider in determing whether and in what amount an award should be made.

(e) The application shall be signed by the applicant or an authorized officer or attorney of the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true and correct.

§ 1262.202 Net worth exhibit.

(a) Each applicant except a qualified tax-exempt organization or cooperative association must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as defiined in § 1262.104(f) when the proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this part. The adjudicative officer may require an applicant to file additional information to determine its eligibility for an award.

(b) Ordinarily, the net worth exhibit will be included in the public records of the proceeding. However, an applicant that objects to public disclosure of information in any portion of the exhibit and believes there are legal grounds for withholding it from disclosure may submit that portion of the exhibit directly to the adjudicative officer in a sealed envelope labeled "Confidential Financial Information," accompanied by a motion to withhold the information from public disclosure. The motion shall describe the information sought to be withheld and explain, in detail, why it falls within one or more of the specific exemptions from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b)(1)-(9), why public disclosure of the information would adversely affect the applicant, and why disclosure is not required in the public interest. The materials in question shall be served on counsel representing the agency against which the applicant seeks an award, but need not be served on any other party to the proceeding. If the adjudicative officer finds that the information should not be withheld from disclosure, it shall be placed in the public record of the proceeding. Otherwise, any request to inspect or copy the exhibit shall be disposed of in accordance with the Agency's regulations under the Freedom of Information Act, at 14 CFR Part 1206.

§ 1262.203 Documentation of fees and expenses.

The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, engineering report, test, project, or similar matter for which an award is sought. A separate itemized statement, accompanied by an oath of affirmation under penalty of perjury (28 U.S.C. 1746), shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in connection with the proceeding bu each individual, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount paid or payable by the applicant or by any other person or entity for the services provided. The adjudicative officer may, in addition, require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

§ 1262.204 When an application may be filed.

(a) An application may be filed whenever the applicant has prevailed in the proceeding or in a significant and discrete substantive portion of the proceeding, but in no case later than 30 days after the Agency's final disposition of the proceeding.

(b) If review or reconsideration is sought or taken of a decision as to which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy.

(c) For purposes of this rule, final disposition means the latter of:

(1) The date on which the last "initial decision", in a bifurcated proceeding, or other recommended disposition of the merits (both as to liability and amount, if applicable) of the proceeding, by an adjudicative officer or intermediate reviewer, becomes administratively final;

(2) The date on which an order is issued disposing of any petitions for reconsideration;

(3) If no petition for reconsideration is filed, the last date on which such a petition could have been filed; or

(4) The date of a final order or any other final resolution of the proceeding, such as a settlement or a voluntary dismissal, which is not subject to a petition for reconsideration.

Subpart 1262.3—Procedures for Considering Applications

§ 1262.301 Filing and service of documents.

Any application for an award or other pleading or document related to an application shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the proceeding, except as provided in § 1262.202(b) for confidential financial information.

§ 1262.302 Answer to application.

(a) Within 30 calendar days after service of an application, counsel representing the agency against which an award is sought may file an answer to the application. Unless agency counsel requests an extension of time for filing or files a statement of intent to negotiate under paragraph (b) of this section, failure to file an answer within the 30-day period may be treated as a consent to the award requested.

(b) If agency counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 calendar days, and further extensions may be granted by the adjudicative officer upon request by agency counsel and the applicant.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of agency counsel's position. If the answer is based on any alleged facts not already in the record of the proceeding, agency counsel shall include with the answer either supporting affidavits or a request for further proceedings under § 1262.306.

§ 1262.303 Reply.

Within 15 calendar days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 1262.306.

§ 1262.304 Comments by other parties.

Any party to a proceeding other than the applicant and agency counsel may file comments about an application within 30 calendar days after it is served, or about an answer within 15 calendar days after it is served. A commenting party may not participate further in proceedings on the application unless the adjudicative officer determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

§ 1262.305 Settlement.

The applicant and agency counsel may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding, or after the underlying proceeding has been concluded. If a prevailing party and agency counsel agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

§ 1262.306 Further proceedings.

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or agency counsel, or on his or her own initiative, the adjudicative officer may order further proceedings, such as an informal conference, oral argument, additional written submissions, or, as to issues other than substantial justification (such as the applicant's eligibility or substantiation of fees and expenses), pertinent discovery or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible.

(b) A request that the adjudicative officer order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

§ 1262.307 Decision.

(a) The adjudicative officer (in the case of the NASA BCA, the administrative judge or panel who decided the contract appeal) shall issue an initial decision on the application within 90 calendar days after completion of proceedings on the application. The decision shall include written findings and conclusions on such of the following as are relevant to the decision:

(1) The applicant's eligibility and status as a prevailing party;

(2) Whether the Agency's position was substantially justified;

(3) Whether the applicant unreasonably protracted the proceedings, or whether special circumstances make an award unjust; and

(4) The amounts, if any, awarded for fees and expenses with an explanation of the reasons for any difference between the amount requested and the amount awarded. Further, if the applicant has sought an award against more than one agency, the decision shall allocate responsibility for payment of any award made among the agencies, and shall explain the reasons for the allocation made.

(b) When the Agency appeals the underlying merits of an adversary adjudication, no decision on an application for fees and other expenses in connection with that adversary adjudication shall be made until a final and unreviewable decision is rendered by the court on the appeal or until the underlying merits of the case have been finally determined pursuant to the appeal.

§ 1262.308 Agency review.

(a) Within 30 calendar days of the receipt of the adjudicative officer's initial decision on the fee application, either the applicant or agency counsel may seek Agency review of the decision; or, the NASA Administrator, upon the recommendation of the General Counsel or other designee, may decide to review the decision based on the record. Whether to review a decision is solely a matter within the discretion of the NASA Administrator. A 15-day notice of such review will be given the applicant and agency counsel, and a determination made not later than 45 days from the date of notice. The Administrator may make a final determination concerning the application or remand the application to the adjudicative officer for further proceedings.

(b) If neither the applicant nor agency counsel seek review, and the NASA Administrator does not on own initiative take a review, the adjudicative officer's initial decision on the fee application shall be the final administrative decision of the Agency 45 days after it is issued.

§ 1262.309 Judicial review.

Judicial review of final Agency decisions on awards may be sought under 5 U.S.C. 504(c)(2), which provides: If a party other than the United States is dissatisfied with a determination of fees and other expenses made under [this Part], that party may, within 30 days after the [final administrative] determination is made, appeal the determination to the court of the United States having jurisdiction to review the merits of the underlying decision of the agency adversary adjudication. The court's determination of any appeal heard under this [authority] shall be based solely on the factual record made before the agency. The court may modify the determination of fees and other expenses only if the court finds that the failure to make an award of fees and other expenses, or the calculation of the amont of the award, was unsupported by the substantial evidence.

§ 1262.310 Payment of award.

(a) An applicant seeking payment of an award shall submit to the paying agency a copy of the Agency's final decision granting the award, accompanied by a statement that the applicant will not seek review of the decision in the United States courts. The submission to NASA should be addressed as follows:

Director, Financial Management Division, NASA Headquarters, Washington, DC 20546.

(b) The Agency will pay the amount awarded to the applicant within 60 days, if feasible, unless judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

PART 1263—DEMAND FOR INFORMATION OR TESTIMONY SERVED ON AGENCY EMPLOYEES; PROCEDURES

Sec.

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Authority: 5 U.S.C. 301, 42 U.S.C. 2473(c)(1).

Source: 55 FR 28370, July 11, 1990, unless otherwise noted.

§ 1263.100 Purpose and scope.

(a) This part sets forth procedures to be followed with respect to the production or disclosure of official information or records and/or the testimony of present or former employees of the National Aeronautics and Space Administration relating to any official information acquired by any employee of NASA as part of the performance of that employee's official duties or by virtue of that employee's official status, where a demand for such production, disclosure, or testimony is issued in a federal, state, or other legal proceeding.

(b) This part does not apply to any legal proceeding in which an employee is to testify, while in leave status, as to facts or events that are in no way related to the official duties of that employee or to the functions of the NASA.

§ 1263.101 Definitions.

(a) *Agency*—As referred to in this regulation, Agency means the National Aeronautics and Space Administration.

(b) *Demand*—A subpoena, order, or authorized request for official information, or for the appearance and testimony of NASA personnel, issued as the result of a legal proceeding.

(c) *Employee*—Includes all present and former officers and employees of the National Aeronautics and Space Administration who are or have been appointed by, or subject to the supervision, jurisdiction, or control of the Administrator of the agency.

(d) *Legal proceeding*—Includes any proceeding before a court of law or equity, administrative board or commission, hearing officer, or other body conducting a legal or administrative proceeding.

(e) *Legal proceeding involving the United States*—Any proceeding before a court of law or equity brought on behalf of, or against the United States, NASA or NASA employees, and resulting from alleged NASA operations.

(f) *Official information*—All information of any kind, however stored, that is in the custody and control of NASA or was acquired by NASA personnel as part of official duties or because of official status while such personnel were employed by or on behalf of the NASA.

§ 1263.102 Procedure when a demand is issued in a legal proceeding involving the United States.

Whenever an employee or former employee of NASA receives a demand for production of materials or the disclosure of information, or for appearance and testimony as a witness in a legal proceeding in which NASA or the United States is a party, the employee shall immediately notify in writing the Installation Chief Counsel for Installation employees, the General Counsel for Headquarters employees, or the Attorney-Adviser to the Inspector General (IG) for IG employees. This notice must include copies of all pertinent legal documents and a summary of the employee's knowledge concerning the legal proceeding in question. When necessary, this information may be reported orally, followed by a written confirmation.

§ 1263.103 Procedure when a demand is issued in a legal proceeding not involving the United States.

Whenever an employee or former employee of the Agency receives a demand for production or disclosure of official information in a legal proceeding not involving the United States, the employee shall immediately notify the General Counsel or designate. In addition, the party causing the demand to be issued shall furnish the Office of General Counsel a written, detailed statement of the information sought and its relevance to the proceeding in connection with which it is requested. The General Counsel or designate may waive the requirement that a written summary be furnished where he/she deems it unnecessary. The election to waive the requirement of a written summary in no way constitutes a waiver of any other requirements set forth in this section.

§ 1263.104 Production, disclosure, or testimony prohibited unless approved.

If an employee or former employee receives a demand to produce or disclose official information, that employee may not disclose such materials or information or testify regarding same without the prior approval of the General Counsel or designate.

§ 1263.105 Considerations in determining whether production or disclosure should be made.

The General Counsel or designate shall direct employees to honor all valid demands. In deciding whether a particular demand is valid, the General Counsel or designate may consider:

(a) Whether such disclosure or appearance is appropriate under the rules of procedure governing the legal proceeding in which the demand arose.

(b) Whether disclosure is appropriate under the relevant substantive law concerning privilege.

(c) Whether disclosure might improperly reveal trade secrets, or commercial or financial information that is confidential or privileged.

(d) Whether disclosure might reveal classified information.

(e) Whether disclosure would violate a specific applicable constitutional provision, federal statute or regulation, or executive order.

(f) Whether appearance of the requested employee would seriously implicate an interest of the Agency such as conservation of employee time for conducting official business, avoidance of expending appropriated monies for non-federal purposes, or avoidance of involving the agency in controversial issues not related to its mission.

§ 1263.106 Final decision of the General Counsel as to production, disclosure, or appearance.

After consideration of the factors enumerated in § 1263.105 (a) through (f), the General Counsel or designate may authorize the testimony, disclosure, or production as demanded; limit the subject matter or extent of any testimony, disclosure, or production through written instruction to the employee; or deny permission for any testimony, disclosure, or production. Where appropriate, the General Counsel or designate may seek withdrawal of the demand by the authorizing party. Any decision of the General Counsel or designate shall be final and shall be communicated to the employee and the party causing the demand to be issued.

§ 1263.107 Procedure to be followed when response to a demand is required before the General Counsel or designate has reached a final decision.

If a response to a demand is required before the General Counsel or designate can render a decision, the employee subpoenaed, or an agency attorney or other government attorney designated for that purpose, shall appear on behalf of the employee and shall furnish the authority which issued the demand a copy of these regulations, and inform the authority that the demand has been referred for the prompt consideration of the General Counsel, and shall respectfully request the authority to stay the demand until the General Counsel or designate has rendered a final decision.

§ 1263.108 Procedure in the event of an adverse ruling.

If the court or other authority which caused the demand to be issued declines to stay the effect of the demand pending a final decision by the General Counsel or designate; or if the General Counsel or designate directs that the employee may not comply with the demand, and a court or other authority rules that the demand must be complied with irrespective of that decision, the employee upon whom the demand has been made, or an agency or other governmental attorney, shall respectfully decline to comply with the demand and shall cite, "United States ex rel. Touhy v. Ragen, et. al., 340 U.S. 462 (1951)."

§ 1263.109 Considerations in determining whether these procedures should be waived.

The General Counsel or designate may grant permission to deviate from the policy or procedure established in these regulations. Permission to deviate will be granted when the deviation will not interfere with matters of operational necessity and when:

(a) It is necessary to prevent a miscarriage of justice; or

(b) The deviation is in the best interests of NASA or the United States.

§ 1263.110 Intention to provide guidance.

This part is intended to provide guidance for the internal operation of NASA and is not intended to, does not, and may not be relied upon to create any right of benefit—substantive or procedural—enforceable at law against the United States or NASA.

PART 1264—IMPLEMENTATION OF THE PROGRAM FRAUD CIVIL PENALTIES ACT OF 1986

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APPENDIX A TO PART 1264—NOTICE TO CONSENT TO THE CHAIRPERSON, NASA BOARD OF CONTRACT APPEALS (BCA), OR DESIGNEE, AS PRESIDING OFFICER

AUTHORITY: 31 U.S.C. 3809, 42 U.S.C. 2473(c)(1).

SOURCE: 52 FR 39498, Oct. 22, 1987, unless otherwise noted.

§ 1264.100 Basis and purpose.

(a) *Basis.* This part implements the Program Fraud Civil Remedies Act of 1986, Pub. L. 99-509, sections 6101-6104, 100 Stat. 1874 (October 21, 1986), to be codified at 31 U.S.C. 3801-3812. 31 U.S.C. 3809 of the statute requires each authority head to promulgate regulations necessary to implement the provisions of the statute.

(b) *Purpose.* This part does the following:

(1) Establishes administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to authorities or to their agents; and

(2) Specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments.

§ 1264.101 Definitions.

(a) ALJ means an Adiministrative Law Judge in the authority appointed pursuant to 5 U.S.C. 3105 or detailed to the authority pursuant to 5 U.S.C. 3344. For purposes of this part, the ALJ shall be referred to as the presiding officer.

(b) Authority means the National Aeronautics and Space Administration (NASA).

(c) Authority head means the NASA Administrator or Deputy Administrator or designee. For purposes of this regulation, the NASA General Counsel or Deputy General Counsel is designated legal counsel to the Authority head.

(d) Benefit means, in the context of *statement*, anything of value, including but not limited to any advantage, preference, privilege, license, permit, favorable decision, ruling, status, or loan guarantee.

(e) Claim means any request, demand, or submission—

(1) Made to the authority for property, services, or money (including money representing grants, loans, insurance, or benefits);

(2) Made to a recipient of property, services, or money from the authority or to a party to a contract with the authority—

(i) For property or services if the United States—

(A) Provided such property or services;

(B) Provided any portion of the funds for the purchase of such property or services; or

(C) Will reimburse such recipient or party for the purchase of such property or services; or

(ii) For the payment of money (including money representing grants, loans, insurance, or benefits) if the United States—

(A) Provided any portion of the money requested or demanded; or

(B) Will reimburse such recipient or party for any portion of the money paid on such request or demand; or

(iii) Made to the authority which has the effect of decreasing an obligation to pay or account for property, services, or money.

(f) Complaint means the administrative complaint served by the reviewing official on the defendant under § 1264.106.

(g) Consent hearing means that the authority and the defendant consent, as provided in § 1264.106(c), that the presiding officer be the Chairperson of the NASA Board of Contract Appeals (BCA). The Chairperson may designate another administrative judge of the NASA BCA as presiding officer in a consent hearing.

(h) Defendant means any person alleged in a complaint under § 1264.106 to be liable for a civil penalty or assessment under § 1264.102.

(i) Government means the United States Government.

(j) Individual means a natural person.

(k) Initial decision means the written decision of the ALJ or presiding officer required by § 1264.109 or § 1264.136, and includes a revised initial decision issued following a remand or a motion for reconsideration.

(l) Investigating official means the NASA Inspector General, or designee who is serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS-16 under the General Schedule.

(m) Knows or has reason to know, means that a person with respect to a claim or statement—

(1) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(2) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(3) Acts in reckless disregard of the truth or falsity of the claim or statement.

(n) Makes, wherever it appears, shall include the terms presents, submits, and causes to be made, presented, or submitted. As the context requires, making or made shall likewise include the corresponding forms of such terms.

(o) Person means any individual, partnership, corporation, association, or private organization, and includes the plural of that term.

(p) Presiding officer, except as provided for pursuant to consent trial notice, means (if the authority is not subject to the provisions of Subchapter II of Chapter 5, Title 5, U.S.C.) an officer or employee of the authority who—

(1) Is selected under Chapter 33 of Title 5 pursuant to the competitive examination process applicable to administrative law judges;

(2) Is appointed by the authority head to conduct hearings under this part;

(3) Is assigned to cases in rotation so far as practicable;

(4) May not perform duties inconsistent with the duties and responsibilities of a presiding officer;

(5) Is entitled to pay prescribed by the Office of Personnel Management independently of ratings and recommendations made by the authority and in accordance with Chapter 51 of such Title and Subchapter III of Chapter 53 of such Title;

(6) Is not subject to performance appraisal pursuant to Chapter 43 of such Title; and

(7) May be removed, suspended, furloughed, or reduced in grade or pay only for good cause established and determined by the Merit Systems Protection Board on the record after opportunity for hearing by such Board.

(q) Representative means an attorney who is in good standing of the bar of any State, Territory, or possession of the United States, or of the District of Columbia, or of the Commonwealth of Puerto Rico.

(r) Reviewing official means the NASA Associate Administrator for Management. For purposes of this regulation, the Associate General Counsel (General) or designee is designated legal counsel to the Reviewing official.

(s) Statement means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made—

(1) With respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(2) With respect to (including relating to eligibility for)—

(i) A contract with, or a bid or proposal for a contract with; or

(ii) A grant, loan, or benefit from the authority, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under such contract or for such grant, loan, or benefit, or if the Government will reimburse such State, political subdivision, or party for any portion of the money or property under such contract or for such grant, loan, or benefit.

[52 FR 39498, Oct. 22, 1987, as amended at 54 FR 599, Jan. 9, 1989]

§ 1264.102 Basis for civil penalties and assessments.

(a) *Claims.* (1) Any person who makes a claim that the person knows or has reason to know—

(i) Is false, fictitious, or fraudulent;

(ii) Includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;

(iii) Includes or is supported by any written statement that—

(A) Omits a material fact;

(B) Is false, fictitious, or fraudulent as a result of such omission; and

(C) Is a statement in which the person making such statement has a duty to include such material fact; or

(iv) Is for payment for the provision of property or services which the person has not provided as claimed—

Shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such claim.

(2) Each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim.

(3) A claim shall be considered made to the authority, recipient, or party when such claim is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the authority, recipient, or party.

(4) Each claim for property, services, or money is subject to a civil penalty regardless of whether such property, services, or money is actually delivered or paid.

(5) If the Government has made any payment (including transferred property or provided services) on a claim, a person subject to a civil penalty under paragraph (a)(1) of this section shall also be subject to an assessment of not more than twice the amount of such claim or that portion thereof that is determined to be in violation. Such assessment shall be in lieu of damages sustained by the Government because of such claim.

(b) *Statements.* (1) Any person who makes a written statement that—

(i) The person knows or has reason to know—

(A) Asserts a material fact which is false, fictitious, or fraudulent; or

(B) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement has a duty to include in such statement; and

(ii) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement—

Shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such statement.

(2) Each written representation, certification, or affirmation constitutes a separate statement.

(3) A statement shall be considered made to the authority when such statement is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the authority.

(c) No proof of specific intent to defraud is required to establish liability under this section.

(d) In any case in which it is determined that more than one person is liable for making a claim or statement under this section, each such person may be held liable for a civil penalty under this section.

(e) In any case in which it is determined that more than one person is liable for making a claim under this section on which the Government has made payment (including transferred property or provided services), an assessment may be imposed against any such person or jointly and severally against any combination of such persons.

[52 FR 39498, Oct. 22, 1987, as amended at 54 FR 599, Jan. 9, 1989]

§ 1264.103 Investigation.

(a) If an investigating official concludes that a subpoena pursuant to the authority conferred by 31 U.S.C. 3804(a) is warranted—

(1) The subpoena so issued shall notify the person to whom it is addressed of the authority under which the subpoena is issued and shall identify the records or documents sought;

(2) The subpoena may designate the person, to act on the investigating official's behalf, to receive the documents sought; and

(3) The person receiving such subpoena shall be required to tender to the investigating official or the person designated to receive the documents a certification that the documents sought have been produced, or that such documents are not available and the reasons therefor, or that such documents, suitably identified, have been withheld based upon the assertion of an identified privilege.

(b) If the investigating official concludes that an action under the Program Fraud Civil Remedies Act may be warranted, the investigating official shall submit a report containing the findings and conclusions of such investigation to the reviewing official.

(c) Nothing in this section shall preclude or limit the investigating official's discretion to refer allegations directly to the Department of Justice for suit under the False Claims Act or other civil relief, or to defer or postpone a report of referral to the reviewing official to avoid interference with a criminal investigation or prosecution.

(d) Nothing in this section modifies any responsibility of the investigating official to report violations of criminal law to the Attorney General.

[52 FR 39498, Oct. 22, 1987, as amended at 54 FR 599, Jan. 9, 1989]

§ 1264.104 Review by the reviewing official.

(a) If, based on the report of the investigating official under § 1264.103(b), the reviewing official determines that there is adequate evidence to believe that a person is liable under § 1264.102 of this part, the reviewing official shall transmit to the Attorney General a written notice of the reviewing official's intention to issue a complaint under § 1264.106.

(b) Such notice shall include—

(1) A statement of the reviewing official's reasons for issuing a complaint;

(2) A statement specifying the evidence that supports the allegations of liability;

(3) A description of the claims or statements upon which the allegations of liability are based;

(4) An estimate of the amount of money or the value of property, services, or other benefits requested or demanded in violation of § 1264.102 of this part;

(5) A statement of any exculpatory or mitigating circumstances that may relate to the claims or statements known by the reviewing official or the investigating official; and

(6) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments. Such a statement may be based upon information then known or an absence of any information indicating that the person may be unable to pay such an amount.

§ 1264.105 Prerequisites for issuing a complaint.

(a) The reviewing official may issue a complaint under § 1264.106 only if—

(1) The Department of Justice approves the issuance of a complaint in a written statement described in 31 U.S.C. 3803(b)(1); and

(2) In the case of allegations of liability under § 1264.102(a) with respect to a claim, the reviewing official determines that, with respect to such claim or a group of related claims submitted at the same time such claim is submitted (as defined in paragraph (b) of this section), the amount of money or the value of property or services demanded or requested in violation of § 1264.102(a) does not exceed $150,000.

(b) For the purposes of this section, a related group of claims submitted at the same time shall include only those claims arising from the same transaction (e.g., grant, loan, application or contract) that are submitted simultaneously as part of a single request, demand, or submission.

(c) Nothing in this section shall be construed to limit the reviewing official's autnority to join in a single complaint against a person claims that are unrelated or were not submitted simultaneously, regardless of the amount of money or the value of property or services demanded or requested.

§ 1264.106 Complaint.

(a) On or after the date the Department of Justice approves the issuance of a complaint in accordance with 31 U.S.C. 3803(b)(1), the reviewing official may serve a complaint on the defendant, as provided in § 1264.107.

(b) The complaint shall state--

(1) The allegations of liability against the defendant, including the statutory basis for liability, an identification of the claims or statements that are the basis for the alleged liability, and the reasons why liability allegedly arises from such claims or statements;

(2) The maximum amount of penalties and assessments for which the defendant may be held liable;

(3) Instructions for filing an answer to request a hearing, including a specific statement of the defendant's right to request a hearing by filing an answer and to be represented by a representative; and

(4) That failure to file an answer within 30 days of service of the complaint will result in the imposition of the maximum amount of penalties and assessments without right to appeal as provided in § 1264.109.

(c) At the same time the defendant is served with the complaint, he or she shall also be served with a—

(1) Notice to Consent to the Chairperson of the NASA Board of Contract Appeals (BCA), or Designee, as presiding officer;

(2) Copy of this Part 1264 of 14 CFR.

[52 FR 39498, Oct. 22, 1987, as amended at 54 FR 599, Jan. 9, 1989]

§ 1264.107 Service of complaint.

(a) Service of a complaint must be made by certified or registered mail or by delivery in any manner authorized by Rule 4(d) of the Federal Rules of Civil Procedure.

(b) Proof of service, stating the name and address of the person on whom the complaint was served, and the manner and date of service, may be made by—

(1) Affidavit of the individual servicing the complaint by delivery;

(2) A United States Postal Service return receipt card acknowledging receipt; or

(3) Written acknowledgment of receipt by the defendant or his/her representative.

[52 FR 39498, Oct. 22, 1987, as amended at 54 FR 600, Jan. 9, 1989]

§ 1264.108 Answer.

(a) The defendant may request a hearing by filing an answer with the reviewing official within 30 days of service of the complaint. An answer shall be deemed to be a request for hearing.

(b) In the answer, the defendant—

(1) Shall admit or deny each of the allegations of liability made in the complaint;

(2) Shall state any defense on which the defendant intends to rely;

(3) May state any reasons why the defendant contends that the penalties and assessments should be less than the statutory maximum; and

(4) Shall state the name, address, and telephone number of the person authorized by the defendant to act as defendant's representative, if any.

(c) If the defendant is unable to file an answer meeting the requirements of paragraph (b) of this section within the time provided, the defendant may, before the expiration of 30 days from service of the complaint, file with the reviewing official a general answer denying liability and requesting a hearing, and a request for an extension of time within which to file an answer meeting the requirements of paragraph (b) of this section. The reviewing official, as provided in § 1264.110, shall file promptly with the presiding officer the complaint, the general answer denying liability, and the request for an extension of time. For good cause shown, the presiding officer may grant the defendant up to 30 additional days within which to file an answer meeting the requirements of paragraph (b) of this section.

[52 FR 39498, Oct. 22, 1987, as amended at 54 FR 600, Jan. 9, 1989]

§ 1264.109 Default upon failure to file an answer.

(a) If the defendant does not file an answer within the time prescribed in § 1264.108(a), the reviewing official may refer the complaint to the presiding officer.

(b) Upon the referral of the complaint, the presiding officer shall promptly serve on defendant, in the manner prescribed in § 1264.107, a notice that an initial decision will be issued under this section.

(c) If the defendant fails to answer, the presiding officer shall assume the facts alleged in the complaint to be true and, if such facts establish liability under § 1264.102, the presiding officer shall issue an initial decision imposing the maximum amount of penalities and assessments allowed under the statute.

(d) Except as otherwise provided in this section, by failing to file a timely answer, the defendant waives any right to further review of the penalties and assessments imposed under paragraph (c) of this section, and the initial decision shall become final and binding upon the parties 30 days after it is issued.

(e) If, before such an initial decision becomes final, the defendant files a motion with the presiding officer seeking to reopen on the grounds that extraordinary circumstances prevented the defendant from filing an answer, the initial decision shall be stayed pending the presiding officer's decision on the motion.

(f) If, on such motion, the defendant can demonstrate extraordinary circumstances excusing the failure to file a timely answer, the presiding officer shall withdraw the initial decision under paragraph (c) of this section, if such a decision has been issued, and shall grant the defendant an opportunity to answer the complaint.

(g) A decision of the presiding officer denying a defendant's motion under paragraph (e) of this section is not subject to reconsideration under § 1264.137.

(h) The defendant may appeal to the authority head the decision denying a motion to reopen by filing a notice of appeal with the authority head within 15 days after the presiding officer denies the motion. The timely filing of a notice of appeal shall stay the initial decision until the authority head decides the issue.

(i) If the defendant files a timely notice of appeal with the authority head, the presiding officer shall forward the record of the proceeding to the authority head.

(j) The authority head shall decide expeditiously whether extraordinary circumstances excuse the defendant's failure to file a timely answer based solely on the record before the presiding officer.

(k) If the authority head decides that extraordinary circumstances excused the defendant's failure to file a timely answer, the authority head shall remand the case to the presiding officer with instructions to grant the defendant an opportunity to answer.

(l) If the authority head decides that the defendant's failure to file a timely answer is not excused, the authority head shall reinstate the initial decision of the presiding officer, which shall become final and binding upon the parties 30 days after the authority head issues such decision.

§ 1264.110 Referral of complaint and answer to the presiding officer.

Upon receipt of an answer, the reviewing official shall file the complaint and answer with the presiding officer, and include the name and address of the attorney who will represent the authority before the presiding officer.

§ 1264.111 Notice of hearing.

(a) When the presiding officer receives the complaint and answer, the presiding officer shall promptly serve a notice of hearing upon the defendant in the manner prescribed by § 1264.107. At the same time, the presiding officer shall send a copy of such notice to the representative of the authority.

(b) Such notice shall include—

(1) The tentative time and place, and the nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law asserted;

(4) A description of the precedures for the conduct of the hearing;

(5) The name, address, and telephone number of the representative of the authority and of the defendant;

(6) An opportunity for a settlement conference or proposals of adjustment through alternative dispute resolutions, if not already explored; and

(7) Such other matters as the presiding officer deems appropriate.

§ 1264.112 Parties to the hearing.

(a) The parties to the hearing shall be the defendant and the authority.

(b) Pursuant to 31 U.S.C. 3730(c)(5), a private plaintiff under the False Claims Act, as amended, may participate in these proceedings to the extent authorized by the provisions of that Act. (See section 3 of the False Claims Amendments Act of 1986, Pub. L. 99-562, October 27, 1986.)

§ 1264.113 Separation of functions.

(a) The investigating official, the reviewing official, and any employee or agent of the authority who takes part in investigating, preparing, or presenting a particular case may not, in such case or a factually related case—

(1) Participate in the hearing as the presiding officer;

(2) Participate or advise in the initial decision or the review of the initial decision by the authority head, except as a witness or as the authority representative in the administrative or judicial proceedings; or

(3) Make the collection of penalties and assessments under 31 U.S.C. 3806.

(b) The presiding officer shall not be responsible to, or subject to the supervision or direction of, the investigating official or the reviewing official.

(c) Except as provided in paragraph (a) of this section, the representative for the Government must be a member of the legal staff of the authority. Nothing in this paragraph is intended to prevent assistance to the Government representative by attorneys in the NASA organization or other governmental entities.

§ 1264.114 Ex parte contacts.

No party or person (except employees of the presiding officer's office) shall communicate in any way with the presiding officer on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

[54 FR 600, Jan. 9, 1989]

§ 1264.115 Disqualification of reviewing official or presiding officer.

(a) A reviewing official or presiding officer in a particular case may disqualify himself or herself at any time.

(b) A party may file with the presiding officer a motion for disqualification of a reviewing official or a presiding officer. Such motion shall be accompanied by an affidavit alleging personal bias or other reason for disqualification.

(c) Such motion and affidavit shall be filed promptly upon the party's discovery of reasons for disqualification, or such objections shall be deemed waived.

(d) Such affidavit shall state specific facts that support the party's belief that personal bias or other reason for disqualification exists and the time and circumstances of the party's discovery of such facts. It shall be accompanied by a certificate of the representative of record that it is made in good faith.

(e) Upon the filing of such a motion and affidavit, the presiding officer shall proceed no further in the case until the matter of disqualification is resolved in accordance with paragraph (f) of this section.

(f)(1) If the presiding officer determines that a reviewing official is disqualified, the presiding officer shall dismiss the complaint without prejudice.

(2) If the presiding officer disqualifies himself or herself, the case shall be reassigned promptly to another presiding officer.

(3) If the presiding officer denies a motion to disqualify, the authority head may determine the matter only as part of his or her review of the initial decision upon appeal, if any.

§ 1264.116 Rights of parties.

Except as otherwise limited by this part, all parties may—

(a) Be accompanied, represented, and advised by a representative;

(b) Paticipate in any conference held by the presiding officer;

(c) Conduct discovery;

(d) Agree to stipulations of fact or law, which shall be made part of the record;

(e) Present evidence relevant to the issues at the hearing;

(f) Present and cross-examine witnesses;

(g) Present oral arguments at the hearing as permitted by the presiding officer; and

(h) Submit written briefs and proposed findings of fact and conclusions of law after the hearing.

§ 1264.117 Authority of the presiding officer.

(a) The presiding officer shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The presiding officer has the authority to—

(1) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters, including settlement conferences or other alternative dispute resolution, that may aid in the fair and expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas, requiring the attendance of witnesses and the production of documents at depositions or at hearings, which the presiding officer considers relevant and material;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of discovery;

(8) Regulate the course of the hearing and the conduct of representatives and parties;

(9) Examine witnesses;

(10) Receive, rule on, exclude, or limit evidence;

(11) Upon motion of a party, take official notice of facts;

(12) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no genuine issue as to any material fact;

(13) Conduct any conference, argument, or hearing on motions in person or by telephone; and

(14) Exercise such other authority as is necessary to carry out the responsibilities of the presiding officer under this part.

(c) The presiding officer does not have the authority to find Federal statutes or regulations invalid.

[52 FR 39498, Oct. 22, 1987, as amended at 54 FR 600, Jan. 9, 1989]

§ 1264.118 Prehearing conferences.

(a) The presiding officer may schedule prehearing conferences as appropriate.

(b) Upon the motion of any party, the presiding officer shall schedule at least one prehearing conference at a reasonable time in advance of the hearing.

(c) The presiding officer may use prehearing conferences to discuss the following:

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;

(3) Stipulations and admissions of fact or as to the contents and authenticity of documents;

(4) Whether the parties can agree to submission of the case on a stipulated record;

(5) Whether a party chooses to waive appearance at an oral hearing and to submit only documentary evidence (subject to the objections of other parties) and written arguments;

(6) Limitation of the number of witnesses;

(7) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(8) Discovery;

(9) The time and place for the hearing; and

(10) Such other matters, including settlement, as may tend to expedite the fair and just disposition of the proceedings.

(d) The presiding officer may issue an order containing all matters agreed upon by the parties or ordered by the presiding officer at a prehearing conference.

[52 FR 39498, Oct. 22, 1987, as amended at 54 FR 600, Jan. 9, 1989]

§ 1264.119 Disclosure of documents.

(a) Upon written request to the reviewing official, the defendant may review any relevant and material documents, transcripts, records, and other materials that relate to the allegations set out in the complaint and upon which the findings and conclusions of the investigating official under § 1264.103(b) are based unless such documents are subject to a privilege under Federal law. Upon payment of a reasonable fee for duplication, the defendant may obtain copies of such documents.

(b) Upon written request to the reviewing official, the defendant also may obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint, even if it is contained in a document that would otherwise be privileged. If the document would otherwise be privileged, only that portion containing exculpatory information must be disclosed.

(c) The notice sent to the Attorney General from the reviewing official as described in § 1264.104 is not discoverable under any circumstances.

(d) The defendant may file a motion to compel disclosure of the documents subject to the provisions of this section. Such a motion may only be filed with the presiding officer following the filing of an answer pursuant to § 1264.108.

§ 1264.120 Discovery.

(a) The following types of discovery are authorized:

(1) Requests for production of documents for inspection and copying;

(2) Requests for admissions of the authenticity of any relevant document or of the truth of any relevant fact;

(3) Written interrogatories; and

(4) Depositions.

(b) For the purpose of this section and §§ 1264.121 and 1264.122, the term "documents" includes information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence which the presiding officer considers relevant and material to the hearing. Nothing contained herein shall be interpreted to require the creation of a document.

(c) Unless mutually agreed to by the parties, discovery is available only as ordered by the presiding officer. The presiding officer shall regulate the timing of discovery.

(d) *Motions for discovery.* (1) A party seeking discovery may file a motion with the presiding officer. Such a motion shall be accompanied by a copy of the discovery request or, in the case of depositions, a summary of the scope of the proposed deposition.

(2) Within 10 days of service, a party may file an opposition to the motion and/or a motion for protective order as provided in § 1264.123.

(3) The presiding officer may grant a motion for discovery only if he/she finds that the discovery sought—

(i) Is necessary for the expeditious, fair, and reasonable consideration of the issues;

(ii) Is not unduly costly or burdensome;

(iii) Will not unduly delay the proceeding; and

(iv) Does not seek privileged information.

(4) The burden of showing that discovery should be allowed is on the party seeking discovery.

(5) The presiding officer may grant discovery subject to a protective order under § 1264.123.

(e) *Depositions.* (1) If a motion for deposition is granted, the presiding officer shall issue a subpoena for the deponent, which may require the deponent to produce documents. The subpoena shall specify the time and place at which the deposition will be held.

(2) The party seeking to depose shall serve the subpoena in the manner prescribed in § 1264.107.

(3) The deponent may file with the presiding officer a motion to quash the subpoena or a motion for a protective order within 10 days of service.

(4) The party seeking to depose shall provide for the taking of a verbatim transcript of the deposition, which it shall make available to all other parties for inspection and copying.

(f) Each party shall bear its own costs of discovery.

§ 1264.121 Exchange of witness lists, statements, and exhibits.

(a) At least 15 days before the hearing or at such other time as may be ordered by the presiding officer, the parties shall exchange witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements that the party intends to offer in lieu of live testimony in accordance with paragraph (b) of § 1264.132. At the time the above documents are exchanged, any party that intends to rely on the transcript of deposition testimony in lieu of live testimony at the hearing, if permitted by the presiding officer, shall provide each party with a copy of the specific pages of the transcript it intends to introduce into evidence.

(b) If a party objects, the presiding officer shall not admit into evidence the testimony of any witness whose name does not appear on the witness list or any exhibit not provided to the opposing party, in accordance with paragraph (a) of this section, unless the presiding officer finds goods cause for the failure or that there is no prejudice to the objecting party.

(c) Unless another party objects within the time set by the presiding officer, documents exchanged in accordance with paragraph (a) of this section shall be deemed to be authentic for the purpose of admissibility at the hearing.

§ 1264.122 Subpoena for attendance at hearing.

(a) A party wishing the appearance and testimony of any individual at the hearing may request that the presiding officer issue a subpoena.

(b) A subpoena requiring the attendance and testimony of an individual may also require the individual to produce documents at the hearing.

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(c) A party seeking a subpoena shall file a written request therefor not less than 15 days before the date fixed for the hearing unless otherwise allowed by the presiding officer for good cause shown. Such request shall specify any documents to be produced and shall designate the witnesses and describe the address and location thereof with sufficient particularity to permit such witnesses to be found.

(d) The subpoena shall specify the time and place at which the witness is to appear and any documents the witness is to produce.

(e) The party seeking the subpoena shall serve it in the manner prescribed in § 1264.107. A subpoena on a party or upon an individual under the control of a party may be served by first class mail.

(f) A party or the individual to whom the subpoena is directed may file with the presiding officer a motion to quash the subpoena within 10 days after service or on or before the time specified in the subpoena for compliance if it is less than 10 days after service.

§ 1264.123 Protective order.

(a) A party or a prospective witness or deponent may file a motion for a protective order with respect to discovery sought by an opposing party or with respect to the hearing, seeking to limit the availability or disclosure of evidence.

(b) In issuing a protective order, the presiding officer may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery may be had only through a method of discovery other than that requested,

(4) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the presiding officer;

(6) That the contents of discovery or evidence be sealed;

(7) That a deposition after being sealed be opened only by order of the presiding officer;

(8) That a trade secret or other confidential research, development, commercial information, or facts pertaining to any criminal investigation, proceeding, or other administrative investigation not be disclosed or be disclosed only in a designated way; or

(9) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the presiding officer.

§ 1264.124 Fees.

The party requesting a supoena shall pay the cost of the fees and mileage of any witness supoenaed in the amounts that would be payable to a witness in a proceeding in United States District Court. A check for witness fees and mileage shall accompany the subpoena when served, except that when a subpoena is issued on behalf of the authority, a check for witness fees and mileage need not accompany the subpoena.

§ 1264.125 Form, filing, and service of papers.

(a) *Form.* (1) Documents filed with the presiding officer shall include an original and two copies.

(2) Every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the case number assigned by the presiding officer, and a designation of the paper (e.g., motion to quash subpoena).

(3) Every pleading and paper shall be signed by, and shall contain the address and telephone number of the party or the person on whose behalf the paper was filed, or his or her representative.

(4) Papers are considered filed when they are mailed. Date of mailing may be established by a certificate from the party or its representative or by proof that the document was sent by certified or registered mail.

(b) *Service.* A party filing a document with the presiding officer shall,

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at the time of filing, serve a copy of such document on every other party. Service upon any party of any document other than those required to be served as prescribed in § 1264.107 shall be made by delivering a copy or by placing a copy of the document in the U.S. mail, postage prepaid, and addressed to the party's last known address. When a party is represented by a representative, service shall be made upon such representative.

(c) *Proof of service.* A certificate of the individual serving the document by personal delivery or by mail, setting forth the manner of service, shall be proof of service.

[52 FR 39498, Oct. 22, 1987, as amended at 54 FR 600, Jan. 9, 1989]

§ 1264.126 Computation of time.

(a) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal government, in which event it includes the next business day.

(b) When the period of time allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal government shall be excluded from the computation.

(c) Where a document has been served or issued by placing it in the mail, an additional 5 days will be added to the time permitted for any response.

[52 FR 39498, Oct. 22, 1987, as amended at 54 FR 600, Jan. 9, 1989]

§ 1264.127 Motions.

(a) Any application to the presiding officer for an order or ruling shall be by motion. Motions shall state the relief sought, the authority relied upon, and the facts alleged, and shall be filed with the presiding officer and served on all other parties.

(b) Except for motions made during a prehearing conference or at the hearing, all motions shall be in writing. The presiding officer may require that oral motions be reduced to writing.

(c) Within 15 days after a written motion is served, or such other time as may be fixed by the presiding officer, any party may file a response to such motion.

(d) The presiding officer may not grant a written motion before the time for filing responses thereto has expired, except upon consent of the parties or following a hearing on the motion, but may overrule or deny such motion without awaiting a response.

(e) The presiding officer shall make a reasonable effort to dispose of all outstanding motions prior to the beginning of the hearing.

§ 1264.128 Sanctions.

(a) The presiding officer may sanction a person, including any party or representative for—

(1) Failing to comply with an order, rule, or procedure governing the proceeding;

(2) Failing to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) Any such sanction, including but not limited to those listed in paragraphs (c), (d), and (e) of this section, shall reasonably relate to the severity and nature of the failure or misconduct.

(c) When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the presiding officer may—

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) In the case of requests for admission, deem each matter of which an admission is requested to be admitted;

(3) Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon testimony relating to, the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(d) If a party fails to prosecute or defend an action under this part commenced by service of a notice of hearing, the presiding officer may dismiss the action or may issue an initial decision imposing penalties and assessments.

(e) The presiding officer may refuse to consider any motion, request, response, brief, or other document which is not filed in a timely fashion.

§ 1264.129 The hearing and burden of proof.

(a) The presiding officer shall conduct a hearing on the record in order to determine whether the defendant is liable for a civil penalty or assessment under § 1264.102 and, if so, the appropriate amount of any such civil penalty or assessment considering any aggravating or mitigating factors.

(b) The authority shall prove defendant's liability and any aggravating factors by a preponderance of the evidence.

(c) The defendant shall prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(d) The hearing shall be open to the public unless otherwise ordered by the presiding officer for good cause shown.

§ 1264.130 Determining the amount of penalties and assessments.

(a) In determining an appropriate amount of civil penalties and assessments, the presiding officer, and the authority head upon appeal, should evaluate any circumstances that mitigate or aggravate the violation and should articulate in their opinions the reasons that support the penalties and assessments they impose. Because of the intangible costs of fraud, the expense of investigating such conduct, and the need to deter others who might be similarly tempted, ordinarily double damages and a significant civil penalty should be imposed.

(b) Although not exhaustive, the following factors are among those that may influence the presiding officer and the authority head in determining the amount of penalties and assessments to impose with respect to the misconduct (i.e., the false, fictitious, or fraudulent claims or statements) charged in the complaint:

(1) The number of false, fictitious, or fraudulent claims or statements;

(2) The time period over which such claims or statements were made;

(3) The degree of the defendant's culpability with respect to the misconduct;

(4) The amount of money or the value of the property, services, or benefit falsely claimed;

(5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the costs of investigation;

(6) The relationship of the amount imposed as civil penalties to the amount of the Government's loss;

(7) The potential or actual impact of the misconduct upon national defense, public health or safety, or public confidence in the management of Government programs and operations, including particularly the impact on the intended beneficiaries of such programs;

(8) Whether the defendant has engaged in a pattern of the same or similar misconduct;

(9) Whether the defendant attempted to conceal the misconduct;

(10) The degree to which the defendant has involved others in the misconduct or in concealing it;

(11) Where the misconduct of employees or agents is imputed to the defendant, the extent to which the defendant's practices fostered or attempted to preclude such misconduct;

(12) Whether the defendant cooperated in or obstructed an investigation of the misconduct;

(13) Whether the defendant assisted in identifying and prosecuting other wrongdoers;

(14) The complexity of the program or transaction, and the degree of the defendant's sophistication with respect to it, including the extent of the defendant's prior participation in the program or in similar transactions;

(15) Whether the defendant has been found, in any criminal, civil, or administrative proceeding to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or of a State, directly or indirectly; and

(16) The need to deter the defendant and others from engaging in the same or similar misconduct.

(c) Nothing in this section shall be construed to limit the presiding officer or the authority head from considering any other factors that in any given case may mitigate or aggravate the offense for which penalties and assessments are imposed.

§ 1264.131 Location of hearing.

(a) The hearing may be held—

(1) In any judicial district of the United States in which the defendant resides or transacts business;

(2) In any judicial district of the United States in which the claim or statement in issue was made; or

(3) In such other place as may be agreed upon by the defendant and the presiding officer.

(b) Each party shall have the opportunity to present argument with respect to the location of the hearing.

(c) The hearing shall be held at the place and at the time ordered by the presiding officer.

§ 1264.132 Witnesses.

(a) Except as provided in paragraph (b) of this section, testimony at the hearing shall be given orally by witnesses under oath or affirmation.

(b) At the discretion of the presiding officer, testimony may be admitted in the form of a written statement or deposition. Any such written statement must be provided to all other parties along with the last known address of such witness, in a manner which allows sufficient time for other parties to subpoena such witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing and deposition transcripts shall be exchanged as provided in § 1264.121(a).

(c) The presiding officer shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to make the interrogation and presentation effective for the ascertainment of the truth, avoid needless consumption of time, and protect witnesses from harassment or undue embarrassment.

(d) The presiding officer shall permit the parties to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(e) At the discretion of the presiding officer, a witness may be cross-examined on matters relevant to the proceeding without regard to the scope of his or her direct examination. To the extent permitted by the presiding officer, cross-examination on matters outside the scope of direct examination shall be conducted in the manner of direct examination and may proceed by leading questions only if the witness is a hostile witness, an adverse party, or a witness identified with an adverse party.

(f) Upon motion of any party, the presiding officer shall order witnesses excluded so that they cannot hear the testimony of other witnesses. This rule does not authorize exclusion of—

(1) A party who is an individual;

(2) In the case of a party that is not an individual, an officer or employee of the party appearing for the entity pro se or designated by the party's representative; or

(3) An individual whose presence is shown by a party to be essential to the presentation of its case, including an individual employed by the Government engaged in assisting the representative for the Government.

[52 FR 39498, Oct. 22, 1987, as amended at 54 FR 600, Jan. 9, 1989]

§ 1264.133 Evidence.

(a) The presiding officer shall determine the admissibility of evidence.

(b) Except as provided herein, the presiding officer shall not be bound by the Federal Rules of Evidence. However, the presiding officer may apply the Federal Rules of Evidence where appropriate, e.g., to exclude unreliable evidence.

(c) The presiding officer shall exclude irrelevant and immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence may be excluded if it is privileged under Federal law.

(f) Evidence concerning offers of compromise or settlement shall be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.

(g) The presiding officer shall permit the parties to introduce rebuttal witnesses and evidence.

(h) All documents and other evidence offered or taken for the record shall be open to examination by all parties, unless otherwise ordered by the presiding officer pursuant to § 1264.123.

§ 1264.134 The record.

(a) The hearing will be recorded and transcribed. Transcripts may be obtained following the hearing from the presiding officer at a cost not to exceed the actual cost of duplication.

(b) The transcript of testimony, exhibits, and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the presiding officer and the authority head.

(c) The record may be inspected and copied (upon payment of a reasonable fee) by anyone, unless otherwise ordered by the presiding officer pursuant to § 1264.123.

§ 1264.135 Post-hearing briefs.

The presiding officer may require the parties to file post-hearing briefs. In any event, upon approval of the presiding officer, any party may file a post-hearing brief. The presiding officer shall fix the time for filing such briefs, not to exceed 60 days from the date the parties receive the transcript of the hearing or, if applicable, the stipulated record. Such briefs may be accompanied by proposed findings of fact and conclusions of law. The presiding officer may permit the parties to file reply briefs, and may grant an extension of the 60-day time period or other time for good cause shown.

§ 1264.136 Initial decision.

(a) The presiding officer shall issue an initial decision based solely on the record, which shall contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.

(b) The findings of fact shall include a finding on each of the following issues:

(1) Whether the claims or statements identified in the complaint, or any portions thereof, violate § 1264.102;

(2) If the person is liable for penalties or assessments, the appropriate amount of any such penalties or assessments considering any mitigating or aggravating factors found in the case, such as those described in § 1264.130.

(c) The presiding officer shall promptly serve the initial decision on all parties within 90 days after the time for submission of post-hearing briefs and reply briefs (if permitted) has expired or upon notification that the record is now closed. The presiding officer shall at the same time serve all parties with a statement describing the right of any defendant determined to be liable for a civil penalty or assessment to file a motion for reconsideration with the presiding officer or a notice of appeal with the authority head. If the presiding officer fails to meet the deadline contained in this paragraph, he or she shall notify the parties of the reason for the delay and shall set a new deadline.

(d) Unless the initial decision of the presiding officer is timely appealed to the authoirty head, or a motion for reconsideration of the initial decision is timely filed, the initial decision shall consititute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued by the presiding officer.

[52 FR 39498, Oct. 22, 1987, as amended at 54 FR 600, Jan. 9, 1989]

§ 1264.137 Reconsideration of initial decision.

(a) Except as provided in paragraph (d) of this section, any party may file a motion for reconsideration of the initial decision within 20 days of receipt of the initial decision. If service was made by mail, receipt will be presumed to be 5 days from the date of mailing in the absence of contrary proof.

(b) Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Such motion shall be accompanied by a supporting brief.

(c) Responses to such motions shall be allowed only upon request of the presiding officer.

(d) No party may file a motion for reconsideration of an initial decision that has been revised in response to a previous motion for reconsideration.

(e) The presiding officer may dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(f) If the presiding officer denies a motion for reconsideration, the initial decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after the presiding officer denies the motion, unless the initial decision is timely appealed to the authority head in accordance with § 1264.138.

(g) If the presiding officer issues a revised initial decision, the revised decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued, unless it is timely appealed to the authority head in accordance with § 1264.138.

[52 FR 39498, Oct. 22, 1987, as amended at 54 FR 600, Jan. 9, 1989]

§ 1264.138 Appeal to authority head.

(a) Any defendant who has filed a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal such decision to the authority head by filing a notice of appeal with the authority head in accordance with this section.

(b) The time for appeal to the authority head is as follows:

(1) A notice of appeal may be filed at any time within 30 days after the presiding officer issues an initial decision. However, if any other party files a motion for a reconsideration under § 1264.137, consideration of the appeal shall be stayed automatically pending resolution of the motion for reconsideration.

(2) If a motion for reconsideration is timely filed, a notice of appeal must be filed within 30 days after the presiding officer denies the motion or issues a revised initial decision, whichever applies.

(3) If no motion for reconsideration is timely filed, a notice of appeal must be filed within 30 days after the presiding officer issues the initial decision.

(4) The authority head may extend the initial 30-day period for an additional 30 days if the defendant files with the authority head a request for an extension within the initial 30-day period and shows good cause.

(c) If the defendant files a timely notice of appeal with the authority head and the time for filing motions for reconsideration under § 1264.137 has expired, the presiding officer shall forward the record of the proceeding to the authority head.

(d) A notice of appeal shall be accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions.

(e) The representative for the Government may file a brief in opposition to exceptions within 30 days of receiving the notice of appeal and accompanying brief.

(f) There is no right to appear personally before the authority head.

(g) There is no right to appeal any interlocutory ruling by the presiding officer.

(h) In reviewing the initial decision, the authority head shall not consider any objection that was not raised before the presiding officer unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection.

(i) If any party demonstrates to the satisfaction of the authority head that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the authority head shall remand the matter to the presiding officer for consideration of such additional evidence.

(j) The authority head may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment, determined by the presiding officer in any initial decision.

(k) The authority head shall promptly serve each party to the appeal with a copy of the decision of the authority head. At the same time the authority head shall serve the defendant with a statement describing the defendant's right to seek judicial review.

(l) Unless a petition for review is filed as provided in 31 U.S.C. 3805, after a defendant has exhausted all administrative remedies under this part and within 60 days after the date on which the authority head serves the defendant with a copy of the authority head's decision, a determination that a defendant is liable under § 1264.102 is final and is not subject to judicial review.

[52 FR 39498, Oct. 22, 1987, as amended at 54 FR 600, Jan. 9, 1989]

§ 1264.139 Stays ordered by the Department of Justice.

If at any time the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to the authority head a written finding that continuation of the administrative process described in this part with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, the authority head shall stay the process immediately. If the process is before the presiding officer, the authority head shall promptly transmit the finding to the presiding officer, who, in turn, must stay the proceeding and give notice to all parties and their representatives. The authority head may order the process resumed only upon receipt of the written authorization of the Attorney General.

§ 1264.140 Stay pending appeal.

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the authority head.

(b) No administrative stay is available following a final decision of the authority head.

§ 1264.141 Judicial review.

Section 3805 of Title 31, United States Code, authorizes judicial review by an appropriate United States District Court of a final decision of the authority head imposing penalties or assessments under this part and specifies the procedures for such review.

§ 1264.142 Collection of civil penalties and assessments.

Sections 3806 and 3808(b) of Title 31, United States Code, authorize actions for collection of civil penalties and assessments imposed under this part and specify the procedures for such actions.

§ 1264.143 Right to administrative offset.

The amount of any penalty or assessment which has become final, or for which a judgment has been entered under § 1264.141 or § 1264.142, or any amount agreed upon in a compromise or settlement under § 1264.145, may be collected by administrative offset under 31 U.S.C. 3716, except that an administrative offset may not be made under this subsection against a refund of an overpayment of Federal taxes, then or later owing by the United States to the defendant.

§ 1264.144 Deposit in Treasury of United States.

All amounts collected pursuant to this part shall be deposited as miscellaneous receipts in the Treasury of the United States, except as provided in 31 U.S.C. 3806(g).

§ 1264.145 Compromise or settlement.

(a) Parties may make offers of compromise or settlement at any time, including proposals for alternative dispute resolution.

(b) The reviewing official has the exclusive authority to compromise or settle a case under this part at any time after the date on which the reviewing official is permitted to refer allegations of liability to a presiding officer and before the date on which the presiding officer issues an initial decision.

(c) The authority head has exclusive authority to compromise or settle a case under this part at any time after the date on which the presiding officer issues an initial decision, except during the pendency of any judicial review under § 1264.141 or during the pendency of any civil action to collect penalties and assessments under § 1264.142.

(d) The Attorney General has exclusive authority to compromise or settle a case under this part during the pendency of any judicial review under 31 U.S.C. 3805 or of any civil action to recover penalties and assessments under 31 U.S.C. 3806.

(e) The investigating official may recommend settlement terms to the reviewing official, the authority head, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the authority head, or the Attorney General, as appropriate.

(f) Any compromise or settlement must be in writing.

§ 1264.146 Limitations.

(a) The notice of hearing with respect to a claim or statement must be served in the manner specified in § 1264.107 within 6 years after the date on which such claim or statement is made.

(b) If the defendant fails to file a timely answer, service of a notice under § 1264.109(b) shall be deemed a notice of hearing for purposes of this section.

(c) The statute of limitations may be extended by agreement of the parties.

APPENDIX A TO PART 1264—NOTICE TO CONSENT TO THE CHAIRPERSON, NASA BOARD OF CONTRACT APPEALS (BCA), OR DESIGNEE, AS PRESIDING OFFICER

In accordance with the provisions of 14 CFR 1264.106, you are hereby notified that the Chairperson, NASA Board of Contract Appeals (BCA), or designee, in addition to other duties, upon your consent, may conduct any or all proceedings as the presiding officer, pursuant to 14 CFR Part 1264 which implements the Program Fraud Civil Penalties Act of 1986.

You should be aware that your decision to consent, or not to consent, to the referral of this case to the NASA/BCA must be entirely voluntary. Only if you and the authority head consent to this reference will either the Chairperson or the designee to whom the case may be assigned be informed of your decision.

An appeal from a decision by the presiding officer under this consent procedure may be taken in the same manner as an appeal from a decision by any other presiding officer, as provided in 14 CFR 1264.136(d), 1264.137, 1264.138, and 1264.141.

If you consent, you must sign, date, and return this form within the 30-day period provided for your answer (see 14 CFR 1264.108, 1264.109).

I consent: ______________________

(Signature of person alleged to be liable)

____

(Print name)

____

(Date of signature)

PART 1265—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

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APPENDIX A TO PART 1265—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS—PRIMARY COVERED TRANSACTIONS
APPENDIX B TO PART 1265—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION—LOWER TIER COVERED TRANSACTIONS
APPENDIX C TO PART 1265—CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

AUTHORITY: E.O. 12549; Secs. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); National Aeronautics and Space Act, Pub. L. 85-568, July 29, 1958, as amended, sec. 203(c)(1).

SOURCE: 53 FR 19177, 19204, May 26, 1988, unless otherwise noted.

CROSS REFERENCE: See also Office of Management and Budget notice published at 55 FR 21679, May 25, 1990.

EDITORIAL NOTE: For additional information, see related documents published at 52 FR 20360, May 29, 1987, 53 FR 19160, May 26, 1988, and 53 FR 34474 September 6, 1988.

Subpart A—General

§ 1265.100 Purpose.

(a) Executive Order 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a governmentwide system for nonprocurement debarment and suspension. A person who is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities. Debarment or suspension of a participant in a program by one agency shall have governmentwide effect.

(b) These regulations implement section 3 of Executive Order 12549 and the guidelines promulgated by the Office of Management and Budget under section 6 of the Executive order by:

(1) Prescribing the programs and activities that are covered by the governmentwide system;

(2) Prescribing the governmentwide criteria and governmentwide minimum due process procedures that each agency shall use;

(3) Providing for the listing of debarred and suspended participants, participants declared ineligible (see definition of *ineligible* in § 1265.105(i)), and participants who have voluntarily excluded themselves from participation in covered transactions

(4) Setting forth the consequences of a debarment, suspension, determination of ineligibility, or voluntary exclusion; and

(5) Offering such other guidance as necessary for the effective implementation and administration of the governmentwide system.

(c) Although these regulations cover the listing of ineligible participants and the effect of such listing, they do not prescribe policies and procedures governing declarations of ineligibility.

§ 1265.105 Definitions.

(a) *Adequate evidence.* Information sufficient to support the reasonable belief that a particular act or omission has occurred.

(b) *Affiliate.* Persons are affiliates of each another if, directly or indirectly, either one controls or has the power to control the other, *or,* a third person controls or has the power to control both. Indicia of control include, but are not limited to: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the suspension or debarment of a person which has the same or similar management, ownership, or principal employees as the suspended, debarred, ineligible, or voluntarily excluded person.

(c) *Agency.* Any executive department, military department or defense agency or other agency of the executive branch, excluding the independent regulatory agencies.

(d) *Civil judgment.* The disposition of a civil action by any court of competent jurisdiction, whether entered by verdict, decision, settlement, stipulation, or otherwise creating a civil liability for the wrongful acts complained of; or a final determination of liability under the Program Fraud Civil Remedies Act of 1988 (31 U.S.C. 3801-12).

(e) *Conviction.* A judgment of conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of nolo contendere.

(f) *Debarment.* An action taken by a debarring official in accordance with these regulations to exclude a person from participating in covered transactions. A person so excluded is "debarred."

(g) *Debarring official.* An official authorized to impose debarment. The debarring official is either:

(1) The agency head, or

(2) An official designated by the agency head.

(h) *Indictment.* Indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

(i) *Ineligible.* Excluded from participation in Federal nonprocurement programs pursuant to a determination of ineligibility under statutory, executive order, or regulatory authority, other than Executive Order 12549 and its agency implementing regulations; for exemple, excluded pursuant to the Davis-Bacon Act and its implementing regulations, the equal employment opportunity acts and executive orders, or the environmental protection acts and executive orders. A person is ineligible where the determination of ineligibility affects such person's eligibility to participate in more than one covered transaction.

(j) *Legal proceedings.* Any criminal proceeding or any civil judicial proceeding to which the Federal Government or a State of local government or quasi-governmental authority is a party. The term includes appeals from such proceedings.

(k) *Nonprocurement List.* The portion of the *List of Parties Excluded from Federal Procurement or Nonprocurement Programs* complied, maintained and distributed by the General Services Administration (GSA) containing the names and other information about persons who have been debarred, suspended, or voluntarily excluded under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

(l) *Notice.* A written communication served in person or sent by certified mail, return receipt requested, or its equivalent, to the last known address of a party, its identified counsel, its agent for service of process, or any partner, officer, director, owner, or joint venturer of the party. Notice, if undeliverable, shall be considered to have been received by the addressee five days after being properly sent to the last address known by the agency.

(m) *Participant.* Any person who submits a proposal for, enters into, or reasonably may be expected to enter into a covered transaction. This term also includes any person who acts on behalf of or is authorized to commit a participant in a covered transaction as an agent or representative of another participant.

(n) *Person.* Any individual, corporation, partnership, association, unit of government or legal entity, however organized, except: foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities.

(o) *Preponderance of the evidence.* Proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

(p) *Principal.* Officer, director, owner, partner, key employee, or other person within a participant with primary management or supervisory responsibilities; or a person who has a critical influence on or substantive control over a covered transaction, whether or not employed by the participant. Persons who have a critical influence on or substantive control over a covered transaction are:

(1) Principal investigators.

(q) *Proposal.* A solicited or unsolicited bid, application, request, invitation to consider or similar communication by or on behalf of a person seeking to participate or to receive a benefit, directly or indirectly, in or under a covered transaction.

(r) *Respondent.* A person against whom a debarment or suspension action has been initiated.

(s) *State.* Any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency of a State, exclusive of institutions of higher education, hospitals, and units of local government. A State instrumentality will be considered part of the State government if it has a written determination from a State government that such State considers that instrumentality to be an agency of the State government.

(t) *Suspending official.* An official authorized to impose suspension. The suspending official is either:

(1) The agency head, or

(2) An official designated by the agency head.

(u) *Suspension.* An action taken by a suspending official in accordance with these regulations that immediately excludes a person from participating in covered transactions for a temporary period, pending completion of an investigation and such legal, debarment, or Program Fraud Civil Remedies Act proceedings as may ensue. A person so excluded is "suspended."

(v) *Voluntary exclusion or voluntarily excluded.* A status of nonparticipation or limited participation in covered transactions assumed by a person pursuant to the terms of a settlement.

(w) *NASA.* National Aeronautics and Space Administration.

[53 FR 19177 and 19204, May 26, 1988]

§ 1265.110 Coverage.

(a) These regulations apply to all persons who have participated, are currently participating or may reasonably be expected to participate in transactions under Federal nonprocurement programs. For purposes of these regulations such transactions will be referred to as "covered transactions."

(1) *Covered transaction.* For purposes of these regulations, a covered transaction is a primary covered transaction or a lower tier covered transaction. Covered transactions at any tier need not involve the transfer of Federal funds.

(i) *Primary covered transaction.* Except as noted in paragraph (a)(2) of this section, a primary covered transaction is any nonprocurement transaction between an agency and a person, regardless of type, including: grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, donation agreements and any other nonprocurement transactions between a Federal agency and a person. Primary covered transactions also include those transactions specially designated by the U.S. Department of Housing and Urban Development in such agency's regulations governing debarment and suspension.

(ii) *Lower tier covered transaction.* A lower tier covered transaction is:

(A) Any transaction between a participant and a person other than a procurement contract for goods or services, regardless of type, under a primary covered transaction.

(B) Any procurement contract for goods or services between a participant and a person, regardless of type, expected to equal or exceed the Federal procurement small purchase threshold fixed at 10 U.S.C. 2304(g) and 41 U.S.C. 253(g) (currently $25,000) under a primary covered transaction.

(C) Any procurement contract for goods or services between a participant and a person under a covered transaction, regardless of amount, under which that person will have a critical influence on or substantive control over that covered transaction. Such persons are:

(*1*) Principal investigators.

(*2*) Providers of federally-required audit services.

(2) *Exceptions.* The following transactions are not covered:

(i) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(ii) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, entities consisting wholly or partially of foreign governments or foreign governmental entities;

(iii) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(iv) Federal employment;

(v) Transactions pursuant to national or agency-recognized emergencies or disasters;

(vi) Incidental benefits derived from ordinary governmental operations; and

(vii) Other transactions where the application of these regulations would be prohibited by law.

(b) *Relationship to other sections.* This section describes the types of transactions to which a debarment or suspension under the regulations will apply. Subpart B, "Effect of Action," § 1265.200, "Debarment or suspension," sets forth the consequences of a debarment or suspension. Those consequences would obtain only with respect to participants and principals in the covered transactions and activities described in § 1265.110(a). Sections 1265.325, "Scope of debarment," and 1265.420, "Scope of suspension," govern the extent to which a specific participant or organizational elements of a participant would be automatically included within a debarment or suspension action, and the conditions under which affiliates or persons associated with a participant may also be brought within the scope of the action.

(c) *Relationship to Federal procurement activities.* Debarment and suspension of Federal procurement contractors and subcontractors under Federal procurement contracts are covered by the Federal Acquisition Regulation (FAR), 48 CFR Subpart 9.4.

§ 1265.115 Policy.

(a) In order to protect the public interest, it is the policy of the Federal Government to conduct business only with responsible persons. Debarment and suspension are discretionary actions that, taken in accordance with Executive Order 12549 and these regulations, are appropriate means to implement this policy.

(b) Debarment and suspension are serious actions which shall be used only in the public interest and for the Federal Government's protection and not for purposes of punishment. Agencies may impose debarment or suspension for the causes and in accordance with the procedures set forth in these regulations.

(c) When more than one agency has an interest in the proposed debarment or suspension of a person, consideration shall be given to designating one agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their debarment or suspension actions.

Subpart B—Effect of Action

§ 1265.200 Debarment or suspension.

(a) *Primary covered transactions.* Except to the extent prohibited by law, persons who are debarred or suspended shall be excluded from primary covered transactions as either participants or principals throughout the executive branch of the Federal Government for the period of their debarment or suspension. Accordingly, no agency shall enter into primary covered transactions with such debarred or suspended persons during such period, except as permitted pursuant to § 1265.215.

(b) *Loser tier covered transactions.* Except to the extent prohibited by law, persons who have been debarred or suspended shall be excluded from participating as either participants or principals in all lower tier covered transactions (see § 1265.110(a)(1)(ii)) for the period of their debarment or suspension.

(c) *Exceptions.* Debarment or suspension does not affect a person's eligibility for:

(1) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(2) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities;

(3) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(4) Federal employment;

(5) Transactions pursuant to national or agency-recognized emergencies or disasters;

(6) Incidental benefits derived from ordinary governmental operations; and

(7) Other transactions where the application of these regulations would be prohibited by law.

§ 1265.205 Ineligible persons.

Persons who are ineligible, as defined in § 1265.105(i), are excluded in accordance with the applicable statutory, executive order, or regulatory authority.

§ 1265.210 Voluntary exclusion.

Persons who accept voluntary exclusions under § 1265.315 are excluded in accordance with the terms of their settlements. NASA shall, and participants may, contact the original action agency to ascertain the extent of the exclusion.

§ 1265.215 Exception provision.

NASA may grant an exception permitting a debarred, suspended, or voluntarily excluded person to participate in a particular covered transaction upon a written determination by the agency head or an authorized designee stating the reason(s) for deviating from the Presidential policy established by Executive Order 12549 and § 1265.200 of this rule. However, in accordance with the President's stated intention in the Executive order, exceptions shall be granted only infrequently. Exceptions shall be reported in accordance with § 1265.505(a).

§ 1265.220 Continuation of covered transactions.

(a) Notwithstanding the debarment, suspension, determination of ineligibility, or voluntary exclusion of any person by an agency, agencies and participants may continue covered transactions in existence at the time the person was debarred, suspended, declared ineligible, or voluntarily excluded. A decision as to the type of termination action, if any, to be taken should be made only after thorough review to ensure the propriety of the proposed action.

(b) Agencies and participants shall not renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, ineligible, or voluntarily excluded, except as provided in § 1265.215.

§ 1265.225 Failure to adhere to restrictions.

Except as permitted under § 1265.215 or § 1265.220 of these regulations, a participant shall not knowingly do business under a covered transaction with a person who is debarred or suspended, or with a person who is ineligible for or voluntarily excluded from that covered transaction. Violation of this restriction may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies, as appropriate. A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction (see Appendix B), unless it knows that the certification is erroneous. An agency has the burden of proof that such participant did knowingly do business with such a person.

Subpart C—Debarment

§ 1265.300 General.

The debarring official may debar a person for any of the causes in § 1265.305, using procedures established in §§ 1265.310 through 1265.314. The existence of a cause for debarment, however, does not necessarily require that the person be debarred; the seriousness of the person's acts or omissions and any mitigating factors shall be considered in making any debarment decision.

§ 1265.305 Causes for debarment.

Debarment may be imposed in accordance with the provisions of §§ 1265.300 through 1265.314 for:

(a) Conviction of or civil judgment for:

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

(2) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a person.

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as:

(1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;

(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction.

(c) Any of the following causes:

(1) A nonprocurement debarment by any Federal agency taken before October 1, 1988, the effective date of these regulations, or a procurement debarment by any Federal agency taken pursuant to 48 CFR Subpart 9.4;

(2) Knowingly doing business with a debarred, suspended, ineligible, or voluntarily excluded person, in connection with a covered transaction, except as permitted in § 1265.215 or § 1265.220;

(3) Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed the Federal Government under the Internal Revenue Code) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted;

(4) Violation of a material provision of a voluntary exclusion agreement entered into under § 1265.315 or of any settlement of a debarment or suspension action; or

(5) Violation of any requirement of Subpart F of this part, relating to providing a drug-free workplace, as set forth in § 1265.615 of this part.

(d) Any other cause of so serious or compelling a nature that it affects the present responsibility of a person.

[53 FR 19177, 19204, May 26, 1988, as amended at 54 FR 4950, 4954, Jan. 31, 1989]

§ 1265.310 Procedures.

NASA shall process debarment actions as informally as practicable, consistent with the principles of fundamental fairness, using the procedures in §§ 1265.311 through 1265.314.

§ 1265.311 Investigation and referral.

Information concerning the existence of a cause for debarment from any source shall be promptly reported, investigated, and referred, when appropriate, to the debarring official for consideration. After consideration, the debarring official may issue a notice of proposed debarment.

§ 1265.312 Notice of proposed debarment.

A debarment proceeding shall be initiated by notice to the respondent advising:

(a) That debarment is being considered;

(b) Of the reasons for the proposed debarment in terms sufficient to put the respondent on notice of the conduct or transaction(s) upon which it is based;

(c) Of the cause(s) relied upon under § 1265.305 for proposing debarment;

(d) Of the provisions of § 1265.311 through § 1265.314, and any other NASA procedures, if applicable, governing debarment decisionmaking; and

(e) Of the potential effect of a debarment.

§ 1265.313 Opportunity to contest proposed debarment.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of proposed debarment, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

(b) *Additional proceedings as to disputed material facts.* (1) In actions not based upon a conviction or civil judgment, if the debarring official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the proposed debarment, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents.

(2) A transcribed record of any additional proceedings shall be made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

§ 1265.314 Debarring official's decision.

(a) *No additional proceedings necessary.* In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the debarring official extends this period for good cause.

(b) *Additional proceedings necessary.* (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The debarring official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The debarring official may refer disputed material facts to another official for findings of fact. The debarring official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(3) The debarring official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(c)(1) *Standard of proof.* In any debarment action, the cause for debarment must be established by a preponderance of the evidence. Where the proposed debarment is based upon a conviction or civil judgment, the standard shall be deemed to have been met.

(2) *Burden of proof.* The burden of proof is on the agency proposing debarment.

(d) *Notice of debarring official's decision.* (1) If the debarring official decides to impose debarment, the respondent shall be given prompt notice:

(i) Referring to the notice of proposed debarment;

(ii) Specifying the reasons for debarment;

(iii) Stating the period of debarment, including effective dates; and

(iv) Advising that the debarment is effective for covered transactions throughout the executive branch of the Federal Government unless an agency head or an authorized designee makes the determination referred to in § 1265.215.

(2) If the debarring official decides not to impose debarment, the respondent shall be given prompt notice of that decision. A decision not to impose debarment shall be without prejudice to a subsequent imposition of debarment by any other agency.

§ 1265.315 Settlement and voluntary exclusion.

(a) When in the best interest of the Government, NASA may, at any time, settle a debarment or suspension action.

(b) If a participant and the agency agree to a voluntary exclusion of the participant, such voluntary exclusion shall be entered on the Nonprocurement List (see Subpart E).

§ 1265.320 Period of debarment.

(a) Debarment shall be for a period commensurate with the seriousness of the cause(s). If a suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

(1) Debarment for causes other than those related to a violation of the requirements of Subpart F of this part generally should not exceed three years. Where circumstances warrant, a longer period of debarment may be imposed.

(2) In the case of a debarment for a violation of the requirements of Subpart F of this part (*see* § 1265.305(c)(5)), the period of debarment shall not exceed five years.

(b) The debarring official may extend an existing debarment for an additional period, if that official determines that an extension is necessary to protect the public interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined to be necessary, the procedures of §§ 1265.311 through 1265.314 shall be followed to extend the debarment.

(c) The respondent may request the debarring official to reverse the debarment decision or to reduce the period or scope of debarment. Such a request shall be in writing and supported by documentation. The debarring official may grant such a request for reasons including, but not limited to:

(1) Newly discovered material evidence;

(2) Reversal of the conviction or civil judgment upon which the debarment was based;

(3) Bona fide change in ownership or management;

(4) Elimination of other causes for which the debarment was imposed; or

(5) Other reasons the debarring official deems appropriate.

[53 FR 19177, 19204, May 26, 1988, as amended at 54 FR 4950, 4954, Jan. 31, 1989]

§ 1265.325 Scope of debarment.

(a) *Scope in general.* (1) Debarment of a person under these regulations constitutes debarment of all its divisions and other organizational elements from all covered transactions, unless the debarment decision is limited by its terms to one or more specifically identified individuals, divisions or other organizational elements or to specific types of transactions.

(2) The debarment action may include any affiliate of the participant that is specifically named and given notice of the proposed debarment and an opportunity to respond (see §§ 1265.311 through 1265.314).

(b) *Imputing conduct.* For purposes of determining the scope of debarment, conduct may be imputed as follows:

(1) *Conduct imputed to participant.* The fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a participant may be imputed to the participant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the participant, or with the participant's knowledge, approval, or acquiescence. The participant's acceptance of the benefits derived from the conduct

shall be evidence of such knowledge, approval, or acquiescence.

(2) *Conduct imputed to individuals associated with participant.* The fraudulent, criminal, or other seriously improper conduct of a participant may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the participant who participated in, knew of, or had reason to know of the participant's conduct.

(3) *Conduct of one participant imputed to other participants in a joint venture.* The fraudulent, criminal, or other seriously improper conduct of one participant in a joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement or with the knowledge, approval, or acquiescence of these participants. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

Subpart D—Suspension

§ 1265.400 General.

(a) The suspending official may suspend a person for any of the causes in § 1265.405 using procedures established in §§ 1265.410 through 1265.413.

(b) Suspension is a serious action to be imposed only when:

(1) There exists adequate evidence of one or more of the causes set out in § 1265.405, and

(2) Immediate action is necessary to protect the public interest.

(c) In assessing the adequacy of the evidence, the agency should consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. This assessment should include an examination of basic documents such as grants, cooperative agreements, loan authorizations, and contracts.

§ 1265.405 Causes for suspension.

(a) Suspension may be imposed in accordance with the provisions of §§ 1265.400 through 1265.413 upon adequate evidence:

(1) To suspect the commission of an offense listed in § 1265.305(a); or

(2) That a cause for debarment under § 1265.305 may exist.

(b) Indictment shall constitute adequate evidence for purposes of suspension actions.

§ 1265.410 Procedures.

(a) *Investigation and referral.* Information concerning the existence of a cause for suspension from any source shall be promptly reported, investigated, and referred, when appropriate, to the suspending official for consideration. After consideration, the suspending official may issue a notice of suspension.

(b) *Decisionmaking process.* NASA shall process suspension actions as informally as practicable, consistent with principles of fundamental fairness, using the procedures in § 1265.411 through § 1265.413.

§ 1265.411 Notice of suspension.

When a respondent is suspended, notice shall immediately be given:

(a) That suspension has been imposed;

(b) That the suspension is based on an indictment, conviction, or other adequate evidence that the respondent has committed irregularities seriously reflecting on the propriety of further Federal Government dealings with the respondent;

(c) Describing any such irregularities in terms sufficient to put the respondent on notice without disclosing the Federal Government's evidence;

(d) Of the cause(s) relied upon under § 1265.405 for imposing suspension;

(e) That the suspension is for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings;

(f) Of the provisions of § 1265.411 through § 1265.413 and any other

NASA procedures, if applicable, governing suspension decisionmaking; and

(g) Of the effect of the suspension.

§ 1265.412 Opportunity to contest suspension.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of suspension, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension.

(b) *Additional proceedings as to disputed material facts.* (1) If the suspending official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the suspension, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents, unless:

(i) The action is based on an indictment, conviction or civil judgment, or

(ii) A determination is made, on the basis of Department of Justice advice, that the substantial interests of the Federal Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(2) A transcribed record of any additional proceedings shall be prepared and made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

§ 1265.413 Suspending official's decision.

The suspending official may modify or terminate the suspension (for example, see § 1265.320(c) for reasons for reducing the period or scope of debarment) or may leave it in force. However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of suspension by any other agency or debarment by any agency. The decision shall be rendered in accordance with the following provisions:

(a) *No additional proceedings necessary.* In actions: based on an indictment, conviction, or civil judgment; in which there is no genuine dispute over material facts; or in which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice, the suspending official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the suspending official extends this period for good cause.

(b) *Additional proceedings necessary.* (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The suspending official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The suspending official may refer matters involving disputed material facts to another official for findings of fact. The suspending official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary or capricious or clearly erroneous.

(c) *Notice of suspending official's decision.* Prompt written notice of the suspending official's decision shall be sent to the respondent.

§ 1265.415 Period of suspension.

(a) Suspension shall be for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings, unless terminated sooner by the suspending official or as provided in paragraph (b) of this section.

(b) If legal or administrative proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General or United States Attorney requests its extension in writing, in which case it may be extended for an additional six months. In no event may a suspension extend beyond 18 months, unless such proceedings have been initiated within that period.

(c) The suspending official shall notify the Department of Justice of an impending termination of a suspension, at least 30 days before the 12-month period expires, to give that Department an opportunity to request an extension.

§ 1265.420 Scope of suspension.

The scope of a suspension is the same as the scope of a debarment (see § 1265.325), except that the procedures of §§ 1265.410 through 1265.413 shall be used in imposing a suspension.

Subpart E—Responsibilities of GSA, Agency and Participants

§ 1265.500 GSA responsibilities.

(a) In accordance with the OMB guidelines, GSA shall compile, maintain, and distribute a list of all persons who have been debarred, suspended, or voluntarily excluded by agencies under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

(b) At a minimum, this list shall indicate:

(1) The names and addresses of all debarred, suspended, ineligible, and voluntarily excluded persons, in alphabetical order, with cross-references when more than one name is involved in a single action;

(2) The type of action;

(3) The cause for the action;

(4) The scope of the action;

(5) Any termination date for each listing; and

(6) The agency and name and telephone number of the agency point of contact for the action.

§ 1265.505 NASA responsibilities.

(a) The agency shall provide GSA with current information concerning debarments, suspension, determinations of ineligibility, and voluntary exclusions it has taken. Until February 18, 1989, the agency shall also provide GSA and OMB with information concerning all transactions in which NASA has granted exceptions under § 1265.215 permitting participation by debarred, suspended, or voluntarily excluded persons.

(b) Unless an alternative schedule is agreed to by GSA, the agency shall advise GSA of the information set forth in § 1265.500(b) and of the exceptions granted under § 1265.215 within five working days after taking such actions.

(c) The agency shall direct inquiries concerning listed persons to the agency that took the action.

(d) Agency officials shall check the Nonprocurement List before entering covered transactions to determine whether a participant in a primary transaction is debarred, suspended, ineligible, or voluntarily excluded (Tel. #).

(e) Agency officials shall check the Nonprocurement List before approving principals or lower tier participants where agency approval of the principal or lower tier participant is required under the terms of the transaction, to determine whether such principals or participants are debarred, suspended, ineligible, or voluntarily excluded.

§ 1265.510 Participants' responsibilities.

(a) *Certification by participants in primary covered transactions.* Each participant shall submit the certification in Appendix A to this part for it and its principals at the time the participant submits its proposal in connection with a primary covered transaction, except that States need only complete such certification as to their principals. Participants may decide the method and frequency by which they determine the eligibility of their principals. In addition, each participant may, but is not required to, check the Nonprocurement List for its principals (Tel. #). Adverse information on the certification will not necessarily result in denial of participation. However, the certification, and any additional information pertaining to the certification submitted by the participant, shall be considered in the administration of covered transactions.

(b) *Certification by participants in lower tier covered transactions.* (1) Each participant shall require participants in lower tier covered transactions to include the certification in Appendix B to this part for it and its principals in any proposal submitted in connection with such lower tier covered transactions.

(2) A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction by any Federal agency, unless it knows that the certification is erroneous. Participants may decide the method and frequency by which they determine the eligiblity of their principals. In addition, a participant may, but is not required to, check the Nonprocurement List for its principals and for participants (Tel.).

(c) *Changed circumstances regarding certification.* A participant shall provide immediate written notice to NASA if at any time the participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. Participants in lower tier covered transactions shall provide the same updated notice to the participant to which it submitted its proposals.

Subpart F—Drug-Free Workplace Requirements (Grants)

SOURCE: 55 FR 21683, 21692, May 25, 1990, unless otherwise noted.

§ 1265.600 Purpose.

(a) The purpose of this subpart is to carry out the Drug-Free Workplace Act of 1988 by requiring that—

(1) A grantee, other than an individual, shall certify to the agency that it will provide a drug-free workplace;

(2) A grantee who is an individual shall certify to the agency that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

(b) Requirements implementing the Drug-Free Workplace Act of 1988 for contractors with the agency are found at 48 CFR subparts 9.4, 23.5, and 52.2.

§ 1265.605 Definitions.

(a) Except as amended in this section, the definitions of § 1265.105 apply to this subpart.

(b) For purposes of this subpart—

(1) *Controlled substance* means a controlled substance in schedules I through V of the Controlled Substances Act (21 U.S.C. 812), and as further defined by regulation at 21 CFR 1308.11 through 1308.15;

(2) *Conviction* means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

(3) *Criminal drug statute* means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

(4) *Drug-free workplace* means a site for the performance of work done in connection with a specific grant at which employees of the grantee are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance;

(5) *Employee* means the employee of a grantee directly engaged in the performance of work under the grant, including:

(i) All *direct charge* employees;

(ii) All *indirect charge* employees, unless their impact or involvement is insignificant to the performance of the grant; and,

(iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll.

This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the payroll; or employees of subrecipients or subcontractors in covered workplaces);

(6) *Federal agency* or *agency* means any United States executive department, military department, government corporation, government controlled corporation, any other establishment in the executive branch (including the Executive Office of the President), or any independent regulatory agency;

(7) *Grant* means an award of financial assistance, including a cooperative agreement, in the form of money, or property in lieu of money, by a Federal agency directly to a grantee. The term grant includes block grant and entitlement grant programs, whether or not exempted from coverage under the grants management governmentwide common rule on uniform administrative requirements for grants and cooperative agreements. The term does not include technical assistance that provides services instead of money, or other assistance in the form of loans, loan guarantees, interest subsidies, insurance, or direct appropriations; or any veterans' benefits to individuals, i.e., any benefit to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States;

(8) *Grantee* means a person who applies for or receives a grant directly from a Federal agency (except another Federal agency);

(9) *Individual* means a natural person;

(10) *State* means any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency of a State, exclusive of institutions of higher education, hospitals, and units of local government. A State instrumentality will be considered part of the State government if it has a written determination from a State government that such State considers the instrumentality to be an agency of the State government.

§ 1265.610 Coverage.

(a) This subpart applies to any grantee of the agency.

(b) This subpart applies to any grant, except where application of this subpart would be inconsistent with the international obligations of the United States or the laws or regulations of a foreign government. A determination of such inconsistency may be made only by the agency head or his/her designee.

(c) The provisions of subparts A, B, C, D and E of this part apply to matters covered by this subpart, except where specifically modified by this subpart. In the event of any conflict between provisions of this subpart and other provisions of this part, the provisions of this subpart are deemed to control with respect to the implementation of drug-free workplace requirements concerning grants.

§ 1265.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.

A grantee shall be deemed in violation of the requirements of this subpart if the agency head or his or her official designee determines, in writing, that—

(a) The grantee has made a false certification under § 1265.630;

(b) With respect to a grantee other than an individual—

(1) The grantee has violated the certification by failing to carry out the requirements of paragraphs (A)(a)-(g) and/or (B) of the certification (Alternate I to Appendix C) or

(2) Such a number of employees of the grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the grantee has failed to make a good faith effort to provide a drug-free workplace.

(c) With respect to a grantee who is an individual—

(1) The grantee has violated the certification by failing to carry out its requirements (Alternate II to Appendix C); or

(2) The grantee is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity.

§ 1265.620 Effect of violation.

(a) In the event of a violation of this subpart as provided in § 1265.615, and in accordance with applicable law, the grantee shall be subject to one or more of the following actions:

(1) Suspension of payments under the grant;

(2) Suspension or termination of the grant; and

(3) Suspension or debarment of the grantee under the provisions of this part.

(b) Upon issuance of any final decision under this part requiring debarment of a grantee, the debarred grantee shall be ineligible for award of any grant from any Federal agency for a period specified in the decision, not to exceed five years (*see* § 1265.320(a)(2) of this part).

§ 1265.625 Exception provision.

The agency head may waive with respect to a particular grant, in writing, a suspension of payments under a grant, suspension or termination of a grant, or suspension or debarment of a grantee if the agency head determines that such a waiver would be in the public interest. This exception authority cannot be delegated to any other official.

§ 1265.630 Certification requirements and procedures.

(a)(1) As a prior condition of being awarded a grant, each grantee shall make the appropriate certification to the Federal agency providing the grant, as provided in Appendix C to this part.

(2) Grantees are not required to make a certification in order to continue receiving funds under a grant awarded before March 18, 1989, or under a no-cost time extension of such a grant. However, the grantee shall make a one-time drug-free workplace certification for a non-automatic continuation of such a grant made on or after March 18, 1989.

(b) Except as provided in this section, all grantees shall make the required certification for each grant. For mandatory formula grants and entitlements that have no application process, grantees shall submit a one-time certification in order to continue receiving awards.

(c) A grantee that is a State may elect to make one certification in each Federal fiscal year. States that previously submitted an annual certification are not required to make a certification for Fiscal Year 1990 until June 30, 1990. Except as provided in paragraph (d) of this section, this certification shall cover all grants to all State agencies from any Federal agency. The State shall retain the original of this statewide certification in its Governor's office and, prior to grant award, shall ensure that a copy is submitted individually with respect to each grant, unless the Federal agency has designated a central location for submission.

(d)(1) The Governor of a State may exclude certain State agencies from the statewide certification and authorize these agencies to submit their own certifications to Federal agencies. The statewide certification shall name any State agencies so excluded.

(2) A State agency to which the statewide certification does not apply, or a State agency in a State that does not have a statewide certification, may elect to make one certification in each Federal fiscal year. State agencies that previously submitted a State agency certification are not required to make a certification for Fiscal Year 1990 until June 30, 1990. The State agency shall retain the original of this State agency-wide certification in its central office and, prior to grant award, shall ensure that a copy is submitted individually with respect to each grant, unless the Federal agency designates a central location for submission.

(3) When the work of a grant is done by more than one State agency, the certification of the State agency directly receiving the grant shall be deemed to certify compliance for all workplaces, including those located in other State agencies.

(e)(1) For a grant of less than 30 days performance duration, grantees shall have this policy statement and program in place as soon as possible, but in any case by a date prior to the date on which performance is expected to be completed.

(2) For a grant of 30 days or more performance duration, grantees shall have this policy statement and program in place within 30 days after award.

(3) Where extraordinary circumstances warrant for a specific grant, the grant officer may determine a different date on which the policy statement and program shall be in place.

§ 1265.635 Reporting of and employee sanctions for convictions of criminal drug offenses.

(a) When a grantee other than an individual is notified that an employee has been convicted for a violation of a criminal drug statute occurring in the workplace, it shall take the following actions:

(1) Within 10 calendar days of receiving notice of the conviction, the grantee shall provide written notice, including the convicted employee's position title, to every grant officer, or other designee on whose grant activity the convicted employee was working, unless a Federal agency has designated a central point for the receipt of such notifications. Notification shall include the identification number(s) for each of the Federal agency's affected grants.

(2) Within 30 calendar days of receiving notice of the conviction, the grantee shall do the following with respect to the employee who was convicted.

(i) Take appropriate personnel action against the employee, up to and including termination, consistent with requirements of the Rehabilitation Act of 1973, as amended; or

(ii) Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

(b) A grantee who is an individual who is convicted for a violation of a criminal drug statute occurring during the conduct of any grant activity shall report the conviction, in writing, within 10 calendar days, to his or her Federal agency grant officer, or other designee, unless the Federal agency has designated a central point for the receipt of such notices. Notification shall include the identification number(s) for each of the Federal agency's affected grants.

(Approved by the Office of Management and Budget under control number 0991-0002)

APPENDIX A TO PART 1265—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS—PRIMARY COVERED TRANSACTIONS

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

4. The prospective primary participant shall privide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transac-

tion, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Tel. #).

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

APPENDIX B TO PART 1265—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILTY AND VOLUNTARY EXCLUSION—LOWER TIER COVERED TRANSACTIONS

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter

into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Tel. #).

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

APPENDIX C TO PART 1265—CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

Instructions for Certification

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All *direct charge* employees; (ii) All *indirect charge* employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements

Alternate I. (Grantees Other Than Individuals)

A. The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

——————————————————

——————————————————

——————————————————

Check ☐ if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

[55 FR 21690, 21692, May 25, 1990]

PART 1271—NEW RESTRICTIONS ON LOBBYING

Subpart A—General

Sec.

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Appendix A to Part 1271—Certification Regarding Lobbying
Appendix B to Part 1271—Disclosure Form to Report Lobbying

Authority: Section 319, Pub. L. 101-121 (31 U.S.C. 1352); Pub. L. 97-258 (31 U.S.C. 6301 et seq.)

Source: 55 FR 6737, 6748, Feb. 26, 1990, unless otherwise noted.

Cross reference: See also Office of Management and Budget notice published at 54 FR 52306, December 20, 1989.

Subpart A—General

§ 1271.100 Conditions on use of funds.

(a) No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative ageement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(b) Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a certification, set forth in Appendix A, that the person has not made, and will not make, any payment prohibited by paragraph (a) of this section.

(c) Each person who requests or receives from an agency a Federal contract, grant, loan, or a cooperative agreement shall file with that agency a disclosure form, set forth in Appendix B, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (a) of this section if paid for with appropriated funds.

(d) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a statement, set forth in Appendix A, whether that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

(e) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a disclosure form, set forth in Appendix B, if that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

§ 1271.105 Definitions.

For purposes of this part:

(a) *Agency*, as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1).

(b) *Covered Federal action* means any of the following Federal actions:

(1) The awarding of any Federal contract;

(2) The making of any Federal grant;

(3) The making of any Federal loan;

(4) The entering into of any cooperative agreement; and,

(5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan. Loan guarantees and loan insurance are addressed independently within this part.

(c) *Federal contract* means an acquisition contract awarded by an agency, including those subject to the Federal Acquisition Regulation (FAR), and any other acquisition contract for real or personal property or services not subject to the FAR.

(d) *Federal cooperative agreement* means a cooperative agreement entered into by an agency.

(e) *Federal grant* means an award of financial assistance in the form of money, or property in lieu of money, by the Federal Government or a direct appropriation made by law to any person. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, loan insurance, interest subsidies, insurance, or direct United States cash assistance to an individual.

(f) *Federal loan* means a loan made by an agency. The term does not include loan guarantee or loan insurance.

(g) *Indian tribe* and *tribal organization* have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan Natives are included under the definitions of Indian tribes in that Act.

(h) *Influencing or attempting to influence* means making, with the intent to influence, any communication to or appearance before an officer or employee or any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

(i) *Loan guarantee* and *loan insurance* means an agency's guarantee or insurance of a loan made by a person.

(j) *Local government* means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

(k) *Officer or employee of an agency* includes the following individuals who are employed by an agency:

(1) An individual who is appointed to a position in the Government under title 5, U.S. Code, including a position under a temporary appointment;

(2) A member of the uniformed services as defined in section 101(3), title 37, U.S. Code;

(3) A special Government employee as defined in section 202, title 18, U.S. Code; and,

(4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, U.S. Code appendix 2.

(l) *Person* means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

(m) *Reasonable compensation* means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

(n) *Reasonable payment* means, with respect to perfessional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

(o) *Recipient* includes all contractors, subcontractors at any tier, and subgrantees at any tier of the recipient of funds received in connection with a Federal contract, grant, loan, or cooperative agreement. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

(p) *Regularly employed* means, with respect to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement or a commitment providing for the United States to insure or guarantee a loan, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract, grant, loan, cooperative agreement, loan insurance commitment, or loan guarantee commitment. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

(q) *State* means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

§ 1271.110 Certification and disclosure.

(a) Each person shall file a certification, and a disclosure form, if required, with each submission that initiates agency consideration of such person for:

(1) Award of a Federal contract, grant, or cooperative agreement exceeding $100,000; or

(2) An award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding $150,000.

(b) Each person shall file a certification, and a disclosure form, if required, upon receipt by such person of:

(1) A Federal contract, grant, or cooperative agreement exceeding $100,000; or

(2) A Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding $150,000,

Unless such person previously filed a certification, and a disclosure form, if required, under paragraph (a) of this section.

(c) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraphs (a) or (b) of this section. An event that materially affects the accuracy of the information reported includes:

(1) A cumulative increase of $25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,

(3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(d) Any person who requests or receives from a person referred to in paragraphs (a) or (b) of this section:

(1) A subcontract exceeding $100,000 at any tier under a Federal contract;

(2) A subgrant, contract, or subcontract exceeding $100,000 at any tier under a Federal grant;

(3) A contract or subcontract exceeding $100,000 at any tier under a Federal loan exceeding $150,000; or,

(4) A contract or subcontract exceeding $100,000 at any tier under a Federal cooperative agreement,

Shall file a certification, and a disclosure form, if required, to the next tier above.

(e) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraphs (a) or (b) of this section. That person shall forward all disclosure forms to the agency.

(f) Any certification or disclosure form filed under paragraph (e) of this section shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from an erroneous representation shall be borne solely by the tier filing that representation and shall not be shared by any tier to which the erroneous representation is forwarded. Submitting an erroneous certification or disclosure constitutes a failure to file the required certification or disclosure, respectively. If a person fails to file a required certification or disclosure, the United States may pursue all available remedies, including those authorized by section 1352, title 31, U.S. Code.

(g) For awards and commitments in process prior to December 23, 1989, but not made before that date, certifications shall be required at award or commitment, covering activities occurring between December 23, 1989, and the date of award or commitment. However, for awards and commitments in process prior to the December 23, 1989 effective date of these provisions, but not made before December 23, 1989, disclosure forms shall not be required at time of award or commitment but shall be filed within 30 days.

(h) No reporting is required for an activity paid for with appropriated funds if that activity is allowable under either Subpart B or C.

Subpart B—Activities by Own Employees

§ 1271.200 Agency and legislative liaison.

(a) The prohibition on the use of appropriated funds, in § 1271.100 (a), does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(b) For purposes of paragraph (a) of this section, providing any information specifically requested by an agency or Congress is allowable at any time.

(c) For purposes of paragraph (a) of this section, the following agency and legislative liaison activities are allowable at any time only where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) For purposes of paragraph (a) of this section, the following agencies and legislative liaison activities are allowable only where they are prior to formal solicitation of any covered Federal action:

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and,

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.

(e) Only those activities expressly authorized by this section are allowable under this section.

§ 1271.205 Professional and technical services.

(a) The prohibition on the use of appropriated funds, in § 1271.100 (a), does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement or an extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract, grant, loan, or cooperative agreement or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract, grant, loan, or cooperative agreement.

(b) For purposes of paragraph (a) of this section, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(d) Only those services expressly authorized by this section are allowable under this section.

§ 1271.210 Reporting.

No reporting is required with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

Subpart C—Activities by Other Than Own Employees

§ 1271.300 Professional and technical services.

(a) The prohibition on the use of appropriated funds, in § 1271.100 (a), does not apply in the case of any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action, if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract, grant, loan, or cooperative agreement or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract, grant, loan, or cooperative agreement.

(b) The reporting requirements in § 1271.110 (a) and (b) regarding filing a disclosure form by each person, if required, shall not apply with respect to professional or technical services rendered directly in the preparation, submission, or negotiation of any commitment providing for the United States to insure or guarantee a loan.

(c) For purposes of paragraph (a) of this section, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting or a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(d) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(e) Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(f) Only those services expressly authorized by this section are allowable under this section.

Subpart D—Penalties and Enforcement

§ 1271.400 Penalties.

(a) Any person who makes an expenditure prohibited herein shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such expenditure.

(b) Any person who fails to file or amend the disclosure form (see Appendix B) to be filed or amended if required herein, shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

(c) A filing or amended filing on or after the date on which an administrative action for the imposition of a civil penalty is commenced does not prevent the imposition of such civil penalty for a failure occurring before that date. An administrative action is commenced with respect to a failure when an investigating official determines in writing to commence an investigation of an allegation of such failure.

(d) In determining whether to impose a civil penalty, and the amount of any such penalty, by reason of a violation by any person, the agency shall consider the nature, circumstances, extent, and gravity of the violation, the effect on the ability of such person to continue in business, any prior violations by such person, the degree of culpability of such person, the ability of the person to pay the penalty, and such other matters as may be appropriate.

(e) First offenders under paragraphs (a) or (b) of this section shall be subject to a civil penalty of $10,000, absent aggravating circumstances. Second and subsequent offenses by persons shall be subject to an appropriate civil penalty between $10,000 and $100,000, as determined by the agency head or his or her designee.

(f) An imposition of a civil penalty under this section does not prevent the United States from seeking any other remedy that may apply to the same conduct that is the basis for the imposition of such civil penalty.

§ 1271.405 Penalty procedures.

Agencies shall impose and collect civil penalties pursuant to the provisions of the Program Fraud and Civil Remedies Act, 31 U.S.C. sections 3803 (except subsection (c)), 3804, 3805, 3806, 3807, 3808, and 3812, insofar as these provisions are not inconsistent with the requirements herein.

§ 1271.410 Enforcement.

The head of each agency shall take such actions as are necessary to ensure that the provisions herein are vigorously implemented and enforced in that agency.

Subpart E—Exemptions

§ 1271.500 Secretary of Defense.

(a) The Secretary of Defense may exempt, on a case-by-case basis, a covered Federal action from the prohibition whenever the Secretary determines, in writing, that such an exemption is in the national interest. The Secretary shall transmit a copy of each such written exemption to Congress immediately after making such a determination.

(b) The Department of Defense may issue supplemental regulations to implement paragraph (a) of this section.

Subpart F—Agency Reports

§ 1271.600 Semi-annual compilation.

(a) The head of each agency shall collect and compile the disclosure reports (see Appendix B) and, on May 31 and November 30 of each year, submit to the Secretary of the Senate and the Clerk of the House of Representatives a report containing a compilation of the information contained in the disclosure reports received during the six-month period ending on March 31 or September 30, respectively, of that year.

(b) The report, including the compilation, shall be available for public inspection 30 days after receipt of the report by the Secretary and the Clerk.

(c) Information that involves intelligence matters shall be reported only to the Select Committee on Intelligence of the Senate, the Permanent Select Committee on Intelligence of the House of Representatives, and the Committees on Appropriations of the Senate and the House of Representatives in accordance with procedures agreed to by such committees. Such information shall not be available for public inspection.

(d) Information that is classified under Executive Order 12356 or any successor order shall be reported only to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives or the Committees on Armed Services of the Senate and the House of Representatives (whichever such committees have jurisdiction of matters involving such information) and to the Committees on Appropriations of the Senate and the House of Representatives in accordance with procedures agreed to by such committees. Such information shall not be available for public inspection.

(e) The first semi-annual compilation shall be submitted on May 31, 1990, and shall contain a compilation of the disclosure reports received from December 23, 1989 to March 31, 1990.

(f) Major agencies, designated by the Office of Management and Budget (OMB), are required to provide machine-readable compilations to the Secretary of the Senate and the Clerk of the House of Representatives no later than with the compilations due on May 31, 1991. OMB shall provide detailed specifications in a memorandum to these agencies.

(g) Non-major agencies are requested to provide machine-readable compilations to the Secretary of the Senate and the Clerk of the House of Representatives.

(h) Agencies shall keep the originals of all disclosure reports in the official files of the agency.

§ 1271.605 Inspector General report.

(a) The Inspector General, or other official as specified in paragraph (b) of this section, of each agency shall prepare and submit to Congress each year, commencing with submission of the President's Budget in 1991, an evaluation of the compliance of that agency with, and the effectiveness of, the requirements herein. The evaluation may include any recommended changes that may be necessary to strengthen or improve the requirements.

(b) In the case of an agency that does not have an Inspector General, the agency official comparable to an Inspector General shall prepare and submit the annual report, or, if there is no such comparable official, the head of the agency shall prepare and submit the annual report.

(c) The annual report shall be submitted at the same time the agency submits its annual budget justifications to Congress.

(d) The annual report shall include the following: All alleged violations relating to the agency's covered Federal actions during the year covered by the report, the actions taken by the head of the agency in the year covered by the report with respect to those alleged violations and alleged violations in previous years, and the amounts of civil penalties imposed by the agency in the year covered by the report.

APPENDIX A TO PART 1271—CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

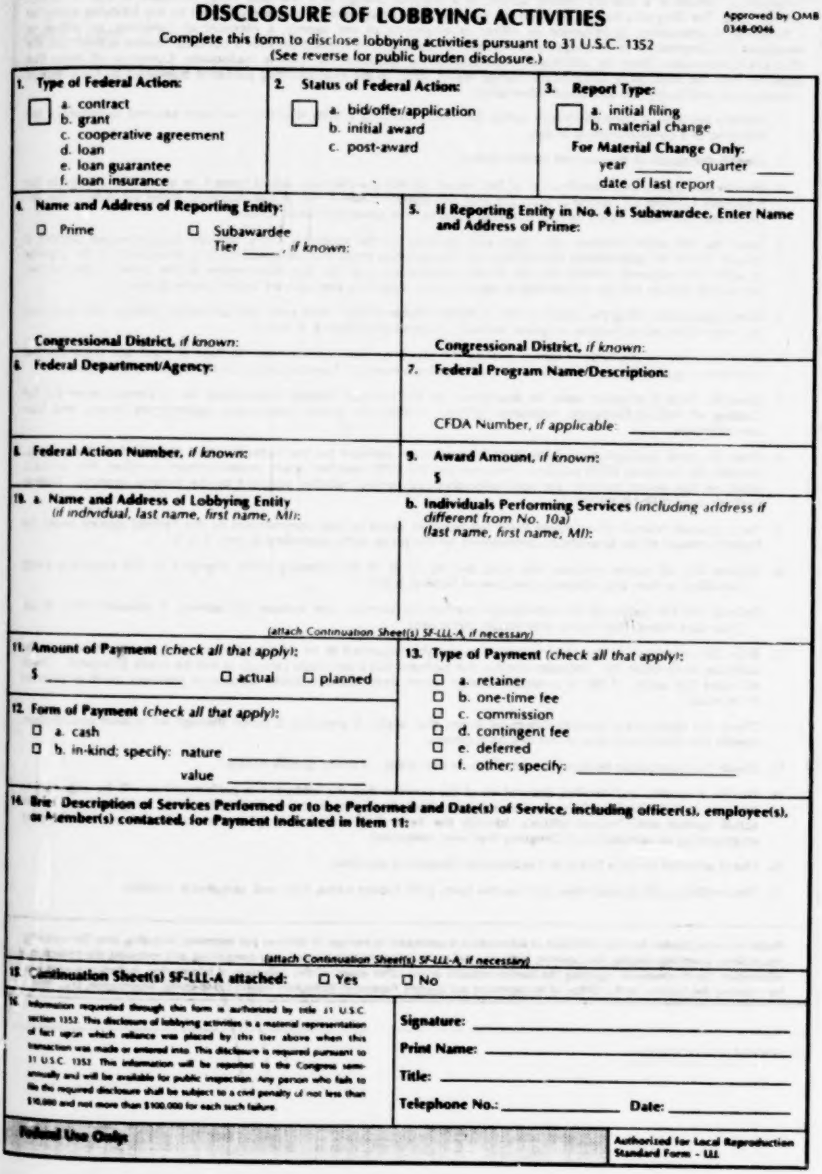
Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

APPENDIX B TO PART 1271—DISCLOSURE FORM TO REPORT LOBBYING



DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
☐
a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐
a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
☐
a. initial filing
b. material change
For Material Change Only:
year ______ quarter ______
date of last report ______

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier ______, *if known:*

Congressional District, *if known:*

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:

Congressional District, *if known:*

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, *if applicable:* ______

8. Federal Action Number, *if known:*

9. Award Amount, *if known:*
$

10. a. Name and Address of Lobbying Entity
(if individual, last name, first name, MI):

b. Individuals Performing Services *(including address if different from No. 10a)*
(last name, first name, MI):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply):*
$ ______ ☐ actual ☐ planned

12. Form of Payment *(check all that apply):*
☐ a. cash
☐ b. in-kind; specify: nature ______
value ______

13. Type of Payment *(check all that apply):*
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: ______

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: ______
Print Name: ______
Title: ______
Telephone No.: ______ **Date:** ______

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INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: ______________________ ______________________ **Page** _____ **of** _____

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FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

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Alphabetical List of Agencies Appearing in the CFR
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